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ALEXANDER L. STEVAS,
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Nos. 82-185, 82-246 and 82-259

In the Supreme Court of the United States

OCTOBER TERM, 1982

BOSTON FIREFIGHTERS UNION, LOCAL 718,
PETITIONER,
v.
BOSTON CHAPTER, N.A.A.C.P., INC., ET AL.,
RESPONDENTS.

BOSTON POLICE PATROLMEN'S ASSOCIATION, INC.,
PETITIONER,
v.
PEDRO CASTRO, ET AL.,
RESPONDENTS.

NANCY B. BEECHER, ET AL.,
PETITIONERS,
v.
BOSTON CHAPTER, N.A.A.C.P., INC., ET AL.,
RESPONDENTS.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT.

JOINT APPENDIX.

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PETITION FOR CERTIORARI IN NO. 82-185 FILED AUGUST 2, 1982 AND IN NOS. 82-246 AND 259 FILED AUGUST 9, 1982
CERTIORARI GRANTED NOVEMBER 1, 1982

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May 11, 1982	JUDGMENT: (Campbell, Bownes and Breyer) affirming the judgment of the district court. Opinion by Bownes, J.

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* The proceedings below evolve from four (4) separate actions. Private Plaintiffs filed an action pursuant to 42 U.S.C. §§ 1981 and 1983 asserting racial discrimination in firefighter hiring in the Commonwealth of Massachusetts (No. 72-3060-F) and the United States of America filed a suit under Title VII, CRA of 1964 claiming racial discrimination in Massachusetts Civil Service procedures and Boston Fire Department hiring practices (No. 73-269-F). Other private plaintiffs filed an action pursuant to 42 U.S.C. §§ 1981 and 1983 alleging racial discrimination in police hiring procedures in Massachusetts (No. 70-1220-W) and a later action pursuant to 28 U.S.C. § 1651 (No. 74-2982-C), the All Writs Act. The firefighter cases were consolidated in 1973 and this police and firefighter litigation continued on separate courses until both lines converged in April, 1981 and now proceed on a consolidated basis for purposes of review of the August 7, 1981 modifications.

THE DISTRICT COURT

The Fire Cases

No. 72-3060-F

1972

October 4,	Complaint filed
October 25,	Defts' answer filed c/s
November 2,	Answer of deft. James H. Kelley filed.

1973

July 18,	FREEDMAN, J. ORDER ENTERED. "As a result of the pretrial conference held on 7/17/73, it is hereby ORDERED 1) Motion to consolidate cases 73-269* and 72-3060 is allowed. . ."

1974

February 8,	FREEDMAN, J. OPINION ENTERED.
February 11,	FREEDMAN, J. ORDER ENTERED . . . decree entered by court on February 8 is amended.
February 13,	Director and Commissioners of Civil Service Notice of Appeal filed.

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*The United States of America filed its complaint on January 24, 1973. The City of Boston filed its Answer on February 13, 1973 and the Massachusetts Civil Service Commission filed its Answer on April 19, 1973.

March 13, ... FREEDMAN, J. Re: proposed interim reporting order — "Allowed."

September 18, ... Opinion received from the Court of Appeals entered. . .Affirmed.

1975

April 17, ... FREEDMAN, J. Re: interim consent decree— "APPROVED AND SO ENTERED."

November 25, ... Agreement to effectuate interim consent decree FILED AND ALLOWED. FREEDMAN, J.

1976

November 16, ... FREEDMAN, J. ORDER ENTERED.

1977

April 6, ... FREEDMAN. J. FURTHER AGREEMENT TO EFFECTUATE INTERIM CONSENT DECREE ENTERED.

1979

March 28, ... Stipulation and Agreement filed.

April 3, ... Stipulation and Agreement approved and entered.

1980

March 12, ... FREEDMAN, J. ORDER ENTERED.

1981

April 7, ...	Plaintiffs' Motion to Modify Remedial Orders filed.
April 7, ...	Affidavit of James S. Dittmar filed.
April 21, ...	Stipulation filed.
April 22, ...	MCNAUGHT, J. Hearing on Pltfs. and govt. intervenors motions to modify remedial orders — Motion of Fireman's Union to intervene allowed. TAKEN UNDER ADVISEMENT.
July 30, ...	CAFFREY, CH. J. Case called for status conference; Oral stipulation of facts entered into by the counsel for plaintiffs and defendants. FILED; Oral argument on motion to amend prior orders; Motion to intervene in Civil Action No. 72-3060-MC was "allowed by court."*
August 7, ...	CAFFREY J. OPINION AND ORDERED ENTERED.
August 19, ...	Stenographic transcripts of status conference held on 07/30/81, filed.
August 20, ...	Boston Firefighters' Union Notice of Appeal.
September 1, ...	MEMORANDUM AND ORDER ENTERED. PETITION FOR STAY DENIED.

*Plaintiffs and some defendants executed a stipulation filed on July 30, 1981 and reproduced at J.A. 43a-53a. This stipulation is not recorded in the docket entries; except that its terms were also recited in the oral stipulation which is recorded in the docket entry for July 30, 1981.

The Police Cases

No. 70-1220-W

1970

September 16, ...	Complaint filed.
October 5, ...	Answer of defendants Commissioners of the Massachusetts Civil Service Commission and director of Civil Service filed.
December 7, ...	Answer of defendant Edmund L. McNamara filed.
December 7, ...	Answer of defendants' Nancy Beecher, Joseph Duffy, Aaron Feinberg, Ernest LaFlamme, Helen Mitchell and Mabel Campbell filed.
November 17, ...	WYZANSKI, D.J. OPINION FILED. JUDGMENT ENTERED.
December 6, ...	WYZANSKI, D.J. ORDERED ENTERED 1. The judgment of November 17, 1971 is amended by deleting paragraph 9.
December 6, ...	WYZANSKI, D.J. JUDGMENT As amended December 6, 1971, ENTERED.
December 8, ...	Pltff's Notice of Appeal filed.
December 15, ...	Pltff's Notice of Appeal from Opinion and Judgment 11/17/71 and Order and Judgment as amended 12/6/71. . .

1972

April 31, ... Mandate received from the Court of Appeals — Judgment entered April 26, 1972. . . "Upon consideration whereof, it is now hereby ordered, adjudged and decreed as follows: The amended judgment of the District Court is affirmed in part and reversed in part and the cause is remanded for further proceedings in accordance with the opinion filed this day.

1973

March 28, ... WYZANSKI, S.D.J. MEMORANDUM FILED.

April 15, ... WYZANSKI, S.D.J. OPINION AND DECREE FILED. "Finding that the Proposed Decree is just, reasonable, and in the public interest, and more likely than any other proposed solution to give the people of the Commonwealth of Massachusetts effective, non-discriminatory, dedicated, and honorable police forces, the Proposed Decree is APPROVED and Entered this day.

1975

July 2, ... TAURO, D.J. CONSENT DECREE ENTERED.

1976

July 13, ... CAFFREY, CH. J. Supplemental Consent Decree Entered . . .

1979

June 1, ... CAFFREY, CH. J. Agreement as to May, 1978 examination; filed and APPROVED.

1981

April 6, ... Affidavit of James Dittmar, FILED.

April 6, ... Pltff's motion to modify prior remedial orders filed.

April 16, ... State Deft's memorandum in opposition to pltff's motion to modify prior Court orders, filed.

April 21, ... STIPULATION FILED.

April 22, ... Motion of Boston Police Patrolmen Assoc. to intervene as party deft FILED (. . .)

April 27, ... CAFFREY, CH. J. re: motion to limit appearance, MOTION ALLOWED, and motion to intervene as party deft., MOTION ALLOWED.

July 30, ... CAFFREY, CH. J. Case called for status conference; oral stipulation of facts entered into by counsel for plaintiffs and defendants FILED; oral argument on motion to

July 30, ... amend prior orders; motion taken under advisement . . .*

August 4, ... Supplemental stipulation FILED See CA 70-1220-C

August 7, ... CAFFREY, CH. J. OPINION AND ORDER ENTERED

August 19, ... Stenographic transcripts of status conference held on 07/30/81, FILED.

August 19, ... Intervenor Boston Police Patrolmen's Assoc. Inc. Notice of Appeal filed c/s.

September 4, ... State Defts. Notice of Appeal filed.

No. 72-2982-C**
1974

July 5, ... Petition for a Writ of Injunction filed (. . .)

July 15, ... TAURO, D.J. MEMORANDUM AND ORDER ENTERED. Civil Service Respondents enjoined from appointing temporary or permanent police officers not consistent with Judge Wyzanski's Order of 4/15/73

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* Plaintiffs and some defendants executed a STIPULATION filed on July 30, 1981 and reproduced at J.A. 79a-89a. This stipulation is not recorded in the docket entries; except that its terms were also recited in the oral stipulation which is recorded in the docket entry for July 30, 1981.

** The court and the parties treated Nos. 70-1220-W and 74-2982-c as consolidated.

THE FIRE CASE

United States District Court
for the
District of Massachusetts

United States of America
Plaintiff

v.

City of Boston, et al.
Defendants

Civil Action
No. 73-269-F

Boston Chapter, NAACP, et al.
Plaintiffs

v.

Nancy B. Beecher, et al.
Defendants

Civil Action
No. 72-3060-F

INTERIM CONSENT DECREE

This case having come on for a hearing before this Court in 1973, and the Court having entered an opinion and decree on

February 8, 1974, and the Court of Appeals for the First Circuit having affirmed, and the defendants' petition for writ of certiorari to the Supreme Court of the United States having been denied, and in view of the extreme necessity that a new examination be administered, the parties consent to entry of this Interim Consent Decree to permit the administration of a new examination in accordance with the Decree of February 8, 1974. Wherefore, the parties agree that:

1. The defendant, Director of Civil Service, [hereinafter Director shall mean the Director, his successors, or after July 1, 1975, the Personnel Administrator] in implementing the February 8, 1974, Decree, shall administer a written test known as the IPMA B-1 (m) examination to all applicants for the fire service in cities and towns within the jurisdiction of Civil Service. This examination shall be administered only after defendants have satisfied the recruitment obligations imposed by paragraphs 5 and 6 of the Decree of February 8, 1974. The examination shall be given on or before July 31, 1975.

2. With regard to the validity of the IPMA B-1 (m) examination, the plaintiffs take no position as to the ultimate validity of IPMA B-1 (m) [hereinafter the "July Exam"] and agree to its use to establish an eligibility list for the certification of firefighters in Massachusetts for the sole purpose of implementing the Decree of February 8, 1974, subject to the conditions established by this Interim Consent Decree. Since the plaintiffs believe that the ranking of individuals on eligibility lists resulting from this test may have an adverse racial impact on Black and Spanish-surnamed persons the plaintiffs do not agree to the use of the results of this test for any purpose other than the implementation of the method and ratios of certification required by the February 8, 1974, Decree.

3. At least sixty (60) days prior to the Administration of the July Exam, the Director shall submit to the Parties a report

detailing the Director's proposed court ordered recruitment program. The plaintiffs shall have ten (10) days to object to the Director's program. Any dispute between the parties regarding the recruitment program, which cannot be resolved, will be resolved by this Court upon motion of any party. Any objection to the recruitment program, not made in writing within ten (10) days, shall be deemed to have been waived.

4. At least sixty (60) days prior to the administration of the July Exam, the Defendant, Boston Fire Commissioner, [hereinafter the Boston Fire Commissioner, shall mean the current Commissioner and his successors] shall submit to the parties a report detailing the City of Boston's proposed court ordered recruitment program. The plaintiffs shall have ten (10) days to object to the Boston Fire Commissioner's program. Any dispute between the parties regarding the recruitment program, which cannot be resolved, will be resolved by this Court upon motion of any party. Any objection to the recruitment program, not made in writing within ten (10) days, shall be deemed to have been waived.

5. With respect to the administration of the July Exam, the cut-off score for determining which candidates have passed the Exam will be set by agreement of the parties. Any party may submit the question of the appropriate cut-off score to this Court for resolution. In any event, the cut-off score should be set so that the method and ratios of certification described in paragraphs 8 through 12 of the February 8, 1974, Decree can be implemented.

6. If subsequent to the administration of the July Exam it appears that pools C or D are inadequate or will become depleted so as to prevent the effectuation of the method and ratios of certification described in paragraphs 8 through 12 of the February 8, 1974, Decree, the Director shall administer a second Fire Fighters Examination. It shall be left to parties,

or the Court, upon motion of any party, to determine what examination will be given, which candidates will be eligible to take the examination, and the time period within which the examination will be given.

7. The Director shall notify the plaintiffs and supply evidence to the plaintiffs whenever a particular city or town has achieved a complement of Black and Spanish-surnamed firefighters commensurate with the percentage of minorities within the community or that the fire department is serving a city or town with less than 1% Black and Spanish-surnamed population. The plaintiffs shall have thirty (30) days to object to the Director's notification. If such objection is not made within thirty (30) days, the particular city or town will no longer be subject to paragraphs 8-12 of the Decree of February 8, 1974, and certification to that city or town will be made according to existing Massachusetts law. Any disputes between the parties in this regard which cannot be resolved by the parties, will be resolved by this Court upon motion by any of the parties (Exhibit A, Fire Service under Civil Service, with racial compositions of each fire department as of Spring, 1975 has been furnished to the parties).

8. The Director shall require all candidates for fire fighter positions to provide the following information at the July Exam: Whether the candidate is (a) caucasian (white); (b) black; (c) Spanish-surnamed (i.e. the candidate was born in a Spanish-speaking country or, if the candidate was born in the United States, the candidate was raised in a home where the primary language was Spanish); (d) Other. Within sixty (60) days after the administration of the July Exam, the Director will furnish the parties with a summary of the racial composition of the candidates examined.

9. Within sixty (60) days after the July Exam has been graded, the Director will submit a report to the parties showing the results by race of all persons taking said Exam, and the name,

address and grade of each Black or Spanish-surnamed individual. Parties shall also receive an item analysis of the results of the Exam, by race.

10. Spanish-surnamed applicants for the July Exam will be given the option of taking the test in Spanish. However, the Director shall require such persons who take the Exam in Spanish to pass a literacy examination to demonstrate their ability to read and write the English language. Said literacy examination will be the Davis Reading Test.

11. Within thirty (30) days after the administration of the Davis Reading Test, the Director shall submit to the parties, a report showing the number of individuals who took the July Exam in Spanish, and the pass/fail rate of those individuals on the Davis Reading Test.

12. Following establishment of the eligibility list based on the July Exam, and every six (6) months thereafter until expiration of the eligibility list from the July Exam, counsel for all parties will be furnished with a copy of the eligibility list for each fire department subject to the jurisdiction of the Director. Further, counsel for all parties will receive from the Director the following information:

On a monthly basis:

(a) A copy of the requisition, certification, and report on certification for each requisitioning fire department.

(b) The name of each Black and Spanish-surnamed candidate from said eligibility lists whose employment is terminated.

(c) The name of each fire fighter whose transfer between fire departments have been approved by the Director subsequent to the date of this Interim Consent Decree.

Every three months:

(d) The name and address of each Black and Spanish-surnamed candidate who has passed the July Exam including the status of each such candidate's eligibility, with explanation of such status.

13. The applicants who pass the July Exam shall be required to pass a test of physical fitness. Said physical fitness test shall not include a swim component unless the appointing authority has petitioned the Director no later than the establishment of the eligibility list that in their opinion a swim component is necessary for the performance of the duties of the position. Said petition shall not be approved by the Director unless the petition includes a validation study which demonstrates the necessity for a swim component, and the reason why satisfaction of said swim component cannot be deferred until completion of the probationary period. The parties reserve their right to move this Court to resolve any dispute under this paragraph.

14. The Director shall impose upon applicants for entrance to the fire service *no educational qualification* unless the appointing authority has petitioned the Director no later than the date of establishment of the eligibility list that in their opinion an educational qualification is necessary for the performance of the duties of the position. The Director shall not approve said petition unless the petition includes a validation study which demonstrates to the Director the necessity for such educational qualification. The parties reserve their right to move this Court to resolve any dispute under this paragraph.

15. The Boston Fire Commissioner agrees that for the purpose of certifying candidates from the eligibility list from the July Exam, he will not require said candidates to pass a swim test.

16. The Boston Fire Commissioner agrees that he will not impose an educational qualification for certification of candidates from the eligibility list resulting from the July Exam.

17. The Director shall have the discretion to disqualify applicants with criminal records or on the basis of bad moral character even though such individuals do not have criminal

convictions, in accordance with guidelines established by the Director, and incorporated herein, for use of records. (See attached Exhibit B). All individuals so disqualified shall be entitled to a hearing before the Director or his designee. The procedure for administrative review shall be as set out in M.G.L. C. 31. In exercise of his discretion, the Director shall exclude applicants on the basis of bad moral character in a nondiscriminatory manner.

18. The Director, if petitioned by an appointing authority prior to certification to impose a residency preference pursuant to C. 31, § 48A, shall impose such residency preference within each of the four groups described in paragraph 7 of the February 8, 1974, Decree.

19. The Director shall disapprove any appointment unless the appointing authority has furnished said Director with a written statement of the reasons for rejecting the appointment of any candidate higher on the list. Said Director shall furnish a written statement of these reasons to the Plaintiffs' attorneys, and also to the candidate upon written request of the candidate.

20. All candidates shall be informed, individually, and in writing, prior to the time that eligibility lists are established, that they are required to meet the following criteria before they can be certified for appointment:

a. Receive a passing mark on the July Exam. Those individuals who take the July Exam in Spanish must pass the Davis Reading Test.

b. Pass a medical examination. It will be noted that said medical examination will be available for inspection at the office of the Director.

c. Pass a strength and agility test. All candidates shall receive a copy of the Strength and Agility Test for fire fighters detailing the requirements of the Strength and Agility Test.

d. Be determined by the Director to be of good moral character. It will be noted that a copy of the Standards and Procedures For The Screening Of Ex-offenders will be available for inspection at the office of the Director.

e. Provide a certificate of birth or other evidence of his date and place of birth satisfactory to the Director.

Further, each candidate shall receive, at the time provided above:

f. A list of all cities and towns which have an educational qualification for fire fighters.

g. A list of all cities and towns which require an applicant to have a driver's license.

h. A list of all cities and towns which have a minimum height requirement.

i. A list of all cities and towns which require an applicant to pass a swim test.

21. The eligibility list which resulted from the August 27, 1971, fire fighter entrance examination shall expire upon the establishment of the eligibility list from the July Exam with the exception of those persons who have been appointed provisional fire fighters from the August 27, 1971, examination eligibility list. Said provisional fire fighters shall comprise the B pool under paragraphs 7, 8, and 9 of the February 8, 1974, Decree.

22. Any applicant for fire fighter in any city or town whose application was filed in the Division of Civil Service on or after August 27, 1971, and who had not reached his 35th birthday on August 27, 1971, as required by C. 194 of the Acts of 1974 shall be eligible to take the July Exam, and shall be eligible for appointment, provided he has reached his nineteenth birthday on the date of application and that he meets all other requirements of law.

23. The Boston Fire Commissioner fully anticipates that at the time that a new eligibility list is posted as a result of the

July Exam, there will be sufficient vacancies so that the number of Black and Spanish-surnamed persons hired will approximate the number of provisional appointments made since the entry of the February 8, 1974 Decree. The Boston Fire Commissioner agrees that prior to the appointment of persons from Group D, the said Commissioner will appoint, if available, a number of persons from Groups A and C to equal the number of persons appointed from Group B.

The timetable for appointing Black and Spanish-surnamed applicants will be governed by the ability of the Department to adequately train incoming applicants in accordance with past practices and will be governed by the method and ratios of certification as described by paragraphs 8 through 12 of the February 8, 1974 Decree.

24. The parties agree that Black and Spanish-surnamed persons who passed a prior fire fighter entrance examination, if otherwise qualified for placement on the current eligibility list in accordance with the entrance requirements set forth in this Interim Consent Decree, shall immediately be placed at the head of the current eligibility list. Said persons also shall be certified for permanent appointment ahead of eligible persons who comprise Group A, in accordance with the method and ratios of certification described in paragraphs 8 through 12 of the February 8, 1974 Decree. Plaintiffs shall furnish the Director the names of Black and Spanish-surnamed persons who passed a prior fire fighter entrance examination.

25. The parties agree that no individual shall be certified for permanent appointment unless said individual has passed a fire fighter entrance examination.

26. The eligibility list established as a result of the July Exam including Group B as described by Paragraph 21 above, shall be established within six (6) months of said Exam and shall expire two years from the date said list is first established.

27. This Interim Consent Decree is in no way designed to lower the standard for certification of fire fighters.

Consented to this 17th day of April, 1975.

4-17-75
Approved and so entered.

/s/_____
Frank H. Freedman
United States District Judge

AGREEMENT TO EFFECTUATE INTERIM CONSENT DECREE

This Court having approved and entered entered an Interim Consent Decree in this action on April 17, 1975, to *allow a new firefighter entrance examination* to be given, and said examination having been given, the parties consent to entry of this Agreement to permit the marking of said examination and the establishment of an eligibility list for the position of firefighter in the Commonwealth of Massachusetts.

WHEREFORE, the parties agree that:

1. The Division of Personnel Administration (formerly known as the Division of Civil Service, and hereinafter, the "Division") shall provide individual applicants with their score on the IPMA examination administered July 10, 11, 12, 1975, but shall not give the scores of any individual, or group of individuals, to an appointing authority.

2. The 26 (twenty-six) Spanish-surnamed applicants who took the IPMA in Spanish and received a passing score but who did not successfully complete the Davis Reading Test, promptly will be allowed to re-take the Davis Reading Test. The reason for this re-test is that there was a misunderstanding among the parties as to its administration. Said applicants who successfully complete the Davis Reading Test shall be considered for certification in the same manner as other applicants.

3. The Division shall administer a medical examination to each applicant being considered for certification. An applicant who fails said examination shall have the right to be retested by a medical review board. At the time of his failure of his first examination, said applicant shall be informed, in writing, of the right to be re-tested by a medical review board, as well as the rights set forth in Paragraph 4 of this Agreement.

4. An applicant who, after failing his first medical examination, appeals to the medical review board and is found medically unfit by the medical review board, shall be removed from the list of those applicants being considered for certification, provided that an applicant may file his one appeal to the medical review board within one year of his failure of the first exam, and further provided that appeals will be processed and completed within 30 (thirty) days of the time an appeal is filed. Nothing in this paragraph shall be deemed to extend the life of the eligibility list.

5. An applicant who fails his initial medical examination shall not be disqualified from taking the physical fitness test if (a) the examining physician certifies that the reason for his failure of said examination would not pose a threat to his health and safety if he were to take the physical fitness test and (b) the applicant signs a waiver holding the Division and physician harmless from liability for injury and for death, as a result of the applicant's condition becoming aggravated by the physical fitness test.

6. The Division or, on its behalf, the Massachusetts Firefighting Academy, shall administer a physical fitness test, to each applicant being considered for certification. The test will consist of 6 (six) different events and given on a pass/fail basis. A copy of the physical fitness test, which is attached hereto, will be mailed, together with IPMA results, to each applicant who has passed the IPMA. Each applicant shall be allowed to attempt each event twice on the same day. The plaintiffs take no position as to the validity of the physical fitness test. The parties reserve their right to petition the Court for resolution of any disputes resulting from the physical fitness test having a significant impact on any group, in accordance with Paragraph 13 of the Interim Consent Decree.

7. If an applicant fails the physical fitness test, his name will not be placed on the certification list for which he was

being considered. Said applicant shall have the right to retake the entire physical fitness test, when he is again being considered for certification, provided that he may choose the certification at which to re-take said test. At the time of his failure of his first test, said applicant shall be informed, in writing, of the right to re-take said test, including the right to choose the certification at which to re-take said test. If an applicant, after failing at his first test, fails this second test, he shall be removed from the list of those applicants being considered for certification.

8. The Division shall certify applicants who have satisfied the IPMA, the medical examination, the physical fitness test, and the moral character test, prior to certification. In the cities of Boston, Bockton, Cambridge, Chelsea, Holyoke, Lawrence, Lynn, New Bedford, Springfield and Worcester, the Division shall give additional firefighter examinations, during the life of the list from the July, 1975, exam, if it appears, or in fact becomes, impossible to certify applicants to the above-named cities in accordance with the Decree of this Court, dated February 8, 1974, and the Interim Consent Decree, dated April 17, 1975, in a manner which will effectuate said Decrees. In cities and towns, other than the above-named, the Division shall not be required to give additional examinations during the life of the list from the July, 1975, exam even if the A and C pools become depleted. For each of the above-named cities, plaintiffs promptly will be provided a list of eligibles, and at the times, each is sent a certified list of eligibles, a copy of said certification.

9. Plaintiffs, at the time when applicants are sent their results on the IPMA, will be furnished with the name, address (including, if possible, address labels) and score of each minority applicant. Plaintiffs, promptly, will be furnished with the name and address of each of the 26 (twenty-six) Spanish-surnamed applicants who has the right to re-take the

Davis Reading Test, and will be furnished with the score for each such applicant who re-takes the Davis Reading Test. Plaintiffs, on a monthly basis, will be furnished with the name and address of each candidate who fails the physical fitness test, and the reasons therefor. In accordance with Paragraph 20 of the Interim Consent Decree, applicants who pass the IPMA will be mailed, together with IPMA results, the information about certification and hiring criteria set forth in said Paragraph 20, and applicants will be informed of the obligation to notify the Division of any change of mailing address.

10. The Fire Commissioner of the City of Boston agrees that minority applicants will be appointed 40 (forty) at a time, and candidates from Group B will be appointed 40 (forty) at a time, until the number of minority appointments equals the number of white appointments made since February 8, 1974, in conformity with Paragraph 23 of the Interim Consent Decree and the letter from the Fire Commissioner to Judge Freedman, dated April 16, 1975.

11. No fire department which is currently subject to the minority preference required by Paragraphs 8-12 of the Decree of February 8, 1974, may be exempted from said Paragraphs unless the appointing authority has first petitioned the Division that the percentage of post-probationary minority uniformed personnel equals the percentage of minorities in the city or town served by said department, and the parties have otherwise satisfied Paragraph 7 of the Interim Consent Decree.

12. The parties reserve all rights to move this Court to resolve any dispute under this Agreement or the Interim Consent Decree.

Agreed to this 25th day of November, 1975.

Approved and entered by:

/s/_____

Frank H. Freedman
U.S. District Judge

DATED: November 25, 1975

ORDER

November 16, 1976

FREEDMAN, D.J.

The Court has been asked to rule on two motions, both of which, if granted, would modify the decree issued as part of the opinion in *Boston Chapter, NAACP, Inc.* v. *Beecher*, 371 F. Supp. 507 (D. Mass.), *aff'd*, 504 F.2d 1017 (1st Cir. 1974), *cert. denied*, 421 U.S. 910 (1975). While it would be unproductive at this time to review that case in detail, I would state generally that in the decree (hereinafter the 1974 decree) this Court enjoined the use of the then current written examination employed in selection of persons for the position of firefighter in the cities and towns of Massachusetts, ordered the City of Boston and its Fire Commissioner to begin additional recruiting of minorities, and established for Blacks and Spanish-surnamed persons a preference in hiring to compensate for the effects of past discrimination. Subsequently, on April 17, 1975, the parties entered into an interim consent decree which permitted the administration of a new examination in accordance with the 1974 decree. Such an examination was given in July, 1975, and a certified list of candidates for firefighter was issued by the Personnel Administrator on August 18, 1976.[1]

At the time the 1974 decree was issued, the Court was aware of the possibility that a city subject to the ruling might in the near future be in immediate need of firefighters prior to the administering of a new examination and the issuance of a new Civil Service eligibility list. Paragraph 3 of the decree dealt with this possibility by stating:

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[1] The position of Personnel Administrator was formerly known as the Director of the Division of Civil Service. What is now entitled the Division of Personnel Administration was formerly known as the Division of Civil Service. To avoid confusion, the Division of Personnel Administration will be referred to herein as Civil Service.

> The City of Boston and any other city or town subject to Civil Service law may request Civil Service for immediate certification of candidates who are currently on the existing Civil Service eligibility list to fill, on a provisional basis, existing vacancies or vacancies which may arise prior to full compliance with this decree. The Court further orders that the life of said list shall, if necessary, be extended beyond the time of its expiration under Massachusetts law and until a new eligibility list is established in accordance with this decree. Should the existing list prove insufficient to fill the number of vacancies existing, the cities or towns subject to Civil Service law may hire firefighters on a provisional basis. The method of selection shall be left to defendants' discretion.

371 F. Supp. at 521. The subject of provisionals was also dealt with in paragraph 21 of the April 17, 1975 Interim Consent Decree:

> The eligibility list which resulted from the August 27, 1971, firefighter entrance examination shall expire upon the establishment of the eligibility list from the July Exam with the exception of those persons who have been appointed provisional firefighters from the August 27, 1971, examination eligibility list. Said provisional firefighters shall comprise the B pool under paragraphs 7, 8, and 9 of the February 8, 1974, Decree.

The current court action began in September, 1976, when the Fire Commission of the City of Springfield (hereinafter the Commission) filed a Motion to Intervene and a Motion for Relief From Judgment. The Commission's motions were

prompted by its desire to determine the status of certain provisional firefighters hired after the issuance of the 1974 decree. Unable to fulfill its need for provisional firefighters by selection of individuals from within Group B, the Commission had taken on other provisionals, some prior to the administering of the new exam in July, 1975, some after. Those in question at this time, however, took the July, 1975 exam and are now certified as members of Group D. What the Commission is now asking in its Motion for Relief From Judgment is that those provisionals be listed first in Group D.[2] In support of that request the Commission points out the time and money invested in the training of the provisionals, as well as the argument that fairness requires that these provisionals be given preference over others in Group D by virtue of the time they have served as firefighters. It further argues that while the provisionals in question took the same on-the-job risks as those hired from Group B, they are not being treated the same, since the B provisionals were listed first in Group B by virtue of the 1974 Decree and the April 17, 1975 Interim Consent Decree. Finally, it asserts that after the hiring of the provisionals, the absolute preference given to veterans within Civil Service in Massachusetts was ruled unconstitutional by a three-judge District Court in *Anthony* v. *Commonwealth of Massachusetts*, 415 F. Supp. 485 (D. Mass. 1976), and that this change in the law has significantly altered the ranking of the provisionals on the Civil Service list.

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[2]The motion seeks modification of paragraph 7(d) of the 1974 decree so that it would read as follows (emphasis has been given to the Commission's suggested addition).

> Group D shall consist of all other persons, excluding those in Groups A, B and C, who pass the new valid examination and are otherwise qualified for appointment on the basis of existing requirements. Said persons shall be ranked in accordance with existing Massachusetts law, *except that any persons who have been appointed to the City of Springfield Fire Department from said list on a provisional basis shall be listed first.*

A hearing on this matter was held on October 28, 1976, at which time this Court allowed the Commission's Motion to Intervene, but only for the limited purpose of determining the status of the provisionals in question. At that time the Court also allowed another motion to intervene filed by four candidates for permanent appointment as firefighters in Springfield who are named in the D Group of the current certification list.[3] That motion was allowed for the same limited purpose as in the case of the Commission.

At the October 28, 1976 hearing, following oral arguments, the Court requested that within one week plaintiff and the Commission attempt to draft and submit a written agreement regarding the status of the provisionals in question, and that all parties wishing to submit arguments on the issue at hand do so by November 9, 1976. It is now apparent that such an agreement was not reached. However, besides memoranda filed by the various parties, what was eventually submitted was an additional motion by plaintiff NAACP to amend the 1974 decree by adding a sixteenth paragraph that would read as follows:

> Notwithstanding Paragraph 9 (a) and (c) of this Order, upon the exhaustion of Groups A and B, candidates shall be certified to the Springfield Fire Department on the following basis:
>
> (a) on the certified list, dated August 18, 1976, one candidate from Group C for each candidate from Group D

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[3] These four intervenors are Robert Gallant, James Martin, Gary Dunkin, and James Fahey. They state they are now eligible for, and willing to accept, permanent appointment as a firefighter in the Fire Department of The City of Springfield. None of them is a provisional appointee, but each claims an interest in this case in that, if granted, the Commission's Motion for Relief From Judgment would impair and impede his ability to protect his interest in obtaining permanent appointment.

provided that the Director of Personnel Administration shall approve not more than sixty appointments from said certified list.

(b) On subsequent certified lists, prepared after the Director of Personnel Administration administers a firefighter entrance examination to applicants for appointment to the Springfield Fire Department, until such time as the number of persons appointed from Groups A and C equals the number of persons appointed from Groups B and D, four candidates from Group C for each candidate from Group D.

At the outset, I wish to make it clear that paragraph 15 of the 1974 decree, which states that "[t]he Court shall retain jurisdiction for such further action as may be necessary or appropriate," was not intended as an indication that the case of *Boston Chapter, NAACP, Inc.* v. *Beecher* would remain open *ad infinitum* or that the Court would entertain as part of that case any and all dissatisfactions that various cities, towns, or individuals might have with the decree. It was merely incorporated to facilitate the resolution of problems between the original parties in their efforts to implement the decree. I do not consider the motions which are now before the Court to be of the nature contemplated when paragraph 15 was conceived. Nevertheless, I hereinafter enter my determinations and reasoning regarding them.

While I can appreciate the arguments made by the Fire Commission of the City of Springfield, after careful consideration, I feel that I have no choice but to deny its Motion for Relief From Judgment. Beyond my thinking that such an amendment to the 1974 decree would be ill-advised at this late date, I am of the opinion that giving the provisionals in question the requested preference would be contrary to the law of

the Commonwealth, as well as unfair to those non-provisionals who are on the eligible list and hoping to obtain appointment as firefighters. Chapter 31 of the Massachusetts General Laws, which sets forth the rights and duties of those within the Commonwealth's Civil Service System, gives no rights to a provisional appointee. The authorization of provisional appointments is within the discretion of the personnel administrator, and he may terminate them at any time. Mass. Gen. Laws c. 31 § 15.[4] Even if the personnel administrator is not inclined to terminate the appointments, they are at certain points in time terminated by operation of law. Provisional appointments must terminate within six months and fourteen days from the date of a written examination, Mass. Gen. Laws c. 31, § 12, or within thirty days after the establishment of an eligibility list for the position to be filled, *id.* § 15, whichever occurs first.

The amendment to the 1974 decree requested by the Commission, if made, would provide the provisionals with a priority not contemplated by the laws of Massachusetts. While this Court may in appropriate circumstances interpret those laws,

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[4]The status to be given a provisional employee was apparently made clear to those in Springfield at the time they made application for the position by means of a sheet which began: "INSTRUCTIONS AND EXPLANATION FOR PROVISIONAL APPOINTEES — READ CAREFULLY." That sheet read in part:

> EXPLANATION OF PROVISIONAL APPOINTMENT.
>
> When appointed provisionally, you do not have tenure. (Guaranteed perminent [*sic*] employment) You will still be required to take the next civil service Exam. for firefighter. You must pass this examination plus a strength test and your standing on the certified list will have to be high enough so that your name comes in to the appointing authority for consideration on a certification for perminent [*sic*] appointment. . . . If you do not pass the Exam. or strength test, you cannot be appointed permanently. Remember, being provisionally appointed does not guarantee permanent employment.

it may not restructure them or give them an interpretation that cannot fairly be drawn.

Although there is an initial similarity between what the Commission is requesting regarding a preference in Group D for the provisionals involved herein and the apparent preference given to Group B provisionals whose names had been on the eligibility lists established in April, 1972, there is in fact a distinction. The latter group of appointees had taken and passed a firefighter examination given in 1972. These Group B provisionals were high on the 1972 eligibility list and, but for this Court's 1974 decision, would have eventually obtained permanent appointment. Having already passed the examination and been placed on the eligibility list, it can be said that they had a vested interest in such permanent appointments, and that, as argued by Civil Service, by giving them a preference on future lists, this Court did not accord them any status that they would not have otherwise had. The provisionals now in question, on the other hand, had not passed an examination prior to this Court's 1974 ruling. There is nothing that entitles them to any type of preferred status.

It is understandable that the Commission is concerned over the time and money expended in the training of its provisionals. But, rather than lost, its investment is only postponed. The provisionals, according to what is in the record, have taken and passed the new examination. Those who under Massachusetts law are placed on the eligibility list and are chosen for permanent positions in the future will not have to be retrained.

I do not feel that the effect of the *Anthony* case on veterans preference in Massachusetts is germane to a decision of the issues now before the Court. That the ruling works a hardship on the Springfield Fire Commission because the provisionals it hired are now farther down on the eligibility list is regrettable, but certainly no reason for placing a provisional ahead of

another applicant for permanent appointment. To do so simply because he is a veteran would be circumventing the reasoning and desired result of *Anthony*, which affects many persons, not only firefighters.

I must also deny plaintiff's motion to amend the 1974 decree. I realize that it has been prompted by what plaintiff considers to be serious underrepresentation of Black and Spanish-surnamed firefighters in the Springfield Fire Department. Nevertheless, the Court is not of the opinion that an amendment to the 1974 decree, which was issued well over two and one-half years ago, is the proper way to remedy any underrepresentations of those two minority groups. Prior to the issuance of the 1974 decree, this Court gave careful consideration to past minority discrimination in the selection of firefighters in Massachusetts and possible ways to compensate for it which would at the same time avoid the creation of a procedure that might lead to reverse discrimination. I feel that the preference established in the decree is sufficient to remedy that problem. What is essential to the successful effectuation of that decree, however, is a recruiting program that makes minorities aware of the position of firefighter and the manner in which to properly qualify for it.

The Court is sympathetic to the interests of all parties concerned with the permanent appointment of firefighters in the cities and towns of the Commonwealth. I fully realize that the provisional appointments in question at this time will terminate within a matter of days. However, I feel that the Massachusetts laws regarding such appointments are clear and must be adhered to. In its February 8, 1974 decree, after serious consideration of the issues involved and all persons who would be affected by its ruling, the Court set forth what it believed was the fairest method to compensate for past discriminatory appointment practices. I feel that plaintiff NAACP, defendant Civil Service, and cities such as Spring-

field can work within the decree's framework in a manner that, consistent with the laws of Massachusetts, will assure all those interested a fair and equal opportunity for permanent appointment as a firefighter. Whether that will involve such actions as increased recruitment programs for minorities or additional examinations are questions that such parties should resolve amongst themselves. In the meantime, unless it can be shown that the 1974 decree is inadequate to achieve its desired ends, or that fair appointment procedures are being hindered by applicable state laws or by the malevolent actions of some individual, the United States District Court can not properly be asked to intervene further.

The motion by the Fire Commission of The City of Springfield for relief from judgment is denied. Plaintiff's motion to amend the February 8, 1974 decree is also denied.

/s/_____
Frank H. Freedman
United States District Judge

FURTHER AGREEMENT TO EFFECTUATE INTERIM CONSENT DECREE

This Court having approved and entered an Agreement to Effectuate Interim Consent Decree on November 25, 1975, pursuant to Paragraph 8 of said Agreement, the parties consent to entry of this Further Agreement since it is apparent that the "C" pools for the cities of Boston, Cambridge, Holyoke, Lawrence, Lynn, New Bedford, Worcester, and Springfield have become depleted.

1. The Division of Personnel Administration shall give another firefighter entrance examination in the cities of Boston, Cambridge, Holyoke, Lawrence, Lynn, New Bedford, Worcester and Springfield pursuant to Paragraph 8 of the Agreement to Effectuate Interim Consent Decree, entered by the Court on November 25, 1975.

2. Only those who are residents in the city in which the examination is given, at the time of application, shall be eligible to take the examination, provided that person is otherwise qualified under Massachusetts Law. Applicants who pass the examination and physical fitness test, and are otherwise qualified for certification, shall be eligible for certification to the city in which they reside at the time of application.

3. A firefighter examination will be held in the cities of Holyoke, Lawrence, Springfield and Worcester on June 11, 1977.

4. A firefighter examination will be held in the cities of Boston, Cambridge, Lynn and New Bedford on July 23, 1977.

5. Applications for the June 11, 1977 and July 23, 1977 examinations will be received on an open, competitive basis. The Personnel Administrator reserves the right to set a cut-off date for receipt of applications and to limit the number of applicants for each examination, provided that this is done in a manner which will insure that the method and ratios of the Court's February 8, 1974 decree are effectuated.

6. The eligible lists resulting from the June 11, 1977 and July 23, 1977 examinations shall be established by October 15, 1977 and November 30, 1977, respectively. The eligibility lists based on the June 11, 1977 and July 23, 1977 examinations shall merge with the eligibility lists based on the July, 1975 examination, in accordance with Massachusetts Law (M.G.L. c. 31, § 12). However, nothing in this Further Agreement is designed or intended to extend the life of the eligibility list based on the July, 1975 examination beyond its expiration date (i.e., May 28, 1978).

7. The Division of Personnel Administration shall undertake an affirmative recruitment campaign to attract Black and Spanish-surnamed applicants to take the June 11, 1977 and July 23, 1977 examinations.

8. The examinations will be the IPMA, as modified.

9. Paragraphs 2, 7, 8, 10, 12, 13, 14, 15, 16, 17, 18, 19, 20, 24, 25, and 27 of the Interim Consent Decree entered in this matter on April 17, 1975 and paragraphs 1, 3, 4, 5, 6, 7, and 11 of the Agreement to Effectuate the Interim Consent Decree, entered November 25, 1975, are incorporated by reference in so far as their provisions are consistent with this Order.

10. When a Black or Spanish surnamed candidate's name has appeared on three certification lists, and the candidate has failed to respond for interviews to all of the cities and towns to which he is certified, the Personnel Administrator may remove his name from the list of eligibles. The Personnel Administrator must inform the candidate by certified mail that his name will be removed unless the candidate informs the Personnel Administrator of his continued interest, provided that said candidate is also informed of his right to restore his name to the list of eligibles during the life of the list. Removal shall be affected ten days after receipt of the certified letter, except where the candidate requests his name remain on the eligible list.

11. The eligibility lists based on the June 11, 1977 and July 23, 1977 examination will expire two years from the dates of establishment of said lists, in accordance with Massachusetts law. No provision contained herein shall be construed to prevent additional firefighter examinations, in accordance with Paragraph 8 of the Agreement to Effectuate Interim Consent Decree.

12. The Personnel Administrator shall notify all Black and Spanish-surnamed persons who failed the July, 1975 exam or who passed the exam but have not secured appointment, of their right to take the June 11, 1977 and July 23, 1977 examinations.

13. The Personnel Administrator shall notify the plaintiffs of the names of all candidates removed from the eligibility list, pursuant to the procedure set forth in paragraph 10, above; and shall furnish the plaintiffs with a copy of any requisition filed by any of the eight named cities, between the date of this Further Agreement and the date of establishment of the eligibility list, and, in advance of mailing to any such city, a copy of the certified list to be sent in response to said requisition.

14. The Personnel Administrator shall require that each of the eight named cities, at the time such city files its report of the names of candidates to be appointed, informs by mail, each candidate who appeared for possible appointment, of the status of his candidacy (i.e., "appointed", "rejected", or "not reached").

15. The Fire Commissioner of the City of Boston shall recruit Black and Spanish surnamed candidates for the July 23, 1977 examination, in accordance with this Court's February 8, 1974 decree.

Agreed to this 1st day of April, 1977.

Approved and entered by:

/s/_____

Frank H. Freedman
U.S. District Judge

DATED: April 6, 1977

STIPULATION AND AGREEMENT

In June 1978 the Division of Personnel Administration administered an examination for the position of firefighter. The parties have been unable to agree upon the validity of that examination or upon an appropriate passing score.

The eligible list from the 1975 statewide examination expired in October 1978 and most cities and towns in the Commonwealth have no lists from which to make firefighter appointments. To insure that the various cities and towns of the Commonwealth will be able to make firefighter appointments pending further order of this Court, the parties STIPULATE AND AGREE that:

1. The Division of Personnel Administration may use the results of the June 1978 Firefighter Entrance Exam to establish eligible lists and to certify applicants for the position of firefighter to the cities and towns.

2. Any individuals who are appointed from eligible lists resulting from the June 1978 exam, and who meet all the requirements of law and regulations at the time of their appointment, shall not have their appointment invalidated or their permanent status affected, by subsequent findings of this Court regarding the validity or appropriate passing score of the June 1978 exam.

3. The plaintiffs reserve the right to move this Court to enjoin the use of a certified list to be sent to any city or town when the plaintiffs believe that use of such list would violate orders of this Court.

Agreed to this 26th day of March 1979.

Approved and entered by:

/s/_____
Frank H. Freedman
U.S. District Court Judge

DATED: April 3, 1979

ORDER

On August 7, 1979, plaintiff NAACP brought a Motion for Further Relief against defendant Massachusetts Division of Personnel Administration (hereinafter "DPA"), alleging that DPA had failed to engage in adequate minority recruitment for the June, 1978 statewide firefighter examination in violation of Paragraph Six of the Court's decree of February 8, 1974.

On October 17, 1979, plaintiff United States filed a motion to enforce Paragraph Six of the Court's February 8, 1974 decree, alleging that Defendant DPA and defendant City of Boston had failed to engage in such recruitment efforts as were necessary to achieve the goals set forth in Paragraphs Eight through Twelve of that decree.

On November 28, 1979, plaintiff NAACP filed a Further Motion for Relief, alleging that the City of Boston had failed to comply with Paragraph Six and that approximately 150 firefighter vacancies in 1980 in the Boston Fire Department and 150 during 1981 would be filled exclusively by non-minority candidates because of the City of Boston's inadequate recruitment efforts prior to the June, 1978 examination.

In separate answers, defendants DPA and the City of Boston denied all plaintiffs' allegations and contended that they had complied at all times with the Court's decree of February, 1974.

The parties appeared before this Court on December 6, 1979 for a hearing on these motions, and at the urging of and with the guidance of the Court engaged in substantive discussions which result in entry of the following order:

1. Plaintiff NAACP motion for further relief against DPA is dismissed with prejudice. Plaintiff United States motion to enforce Paragraph Six of the Court's decree, in regard to DPA is dismissed with prejudice.

2. DPA will administer an examination for the entry level position of firefighter for the cities of Boston and Springfield no later than June 28, 1980. Each of these examinations will be open only to residents of each respective city at the time of application.

3. DPA will establish firefighter eligibility lists for the cities of Boston and Springfield not later than 120 days from the date of the examination in each city.

4. DPA will canvas the fire departments in the following cities to determine the projected number of firefighter appointments in each department for 1980 and for 1981:

Boston	Lawrence
Springfield	Cambridge
Holyoke	Lynn
Worcester	New Bedford
Brockton	Lowell

5. For those cities listed in paragraph four (4), *supra*, excluding Boston and Springfield, to which DPA is, or will be, unable to certify one (1) black or Spanish-surnamed (hereinafter "minority") firefighter candidate for every three (3) non-minority candidates to make the anticipated appointments, DPA will administer a new firefighter examination not later than October 30, 1980.

6. DPA will establish eligibility lists not later than six months after each examination administered pursuant to paragraph five (5), *supra*.

7. For the purposes of paragraphs five (5) and eight (8) herein, in determining whether DPA is able to certify minority firefighter candidates from the current eligibility lists in the ratios as set forth in the Court's decree of February, 1974, minorities who have been certified previously will not be

counted as certifiable candidates unless they were certified before and, although willing to accept, were not reached for processing by the appointing fire department or unless they were certified before and, thereafter, have successfully appealed a prior medical, physical or other disqualification.

8. When DPA receives a requisition for firefighter certifications from any of the cities listed in paragraph four (4), *supra*, and is unable to certify minority candidates in the ratios as set forth in the Court's decree of February, 1974, the following procedure will be undertaken:

a) A certified list will be sent for as many positions as there are sufficient minority candidates as defined in paragraph seven (7), *supra*;

b) With the certified list referred to in subparagraph eight (8) a, *supra*, DPA will send a letter to the city making the requisition, explaining that there are insufficient numbers of minorities on the current eligibility list to meet the certification goals of the Court's decree and that a new firefighter examination is scheduled, and the date of that examination. DPA will urge the city to make no additional appointments until such time as a new eligibility list is established. If the city insists upon making the additional appointments, DPA will require the city to specify the minimum number of additional appointments necessary to prevent a public safety emergency and to state reasons for its position that such a public safety emergency exists;

c) If DPA approves the request for additional appointments, it shall notify plaintiffs of its intention to make additional certifications;

d) Plaintiff will have two (2) weeks from the date of notification of DPA'S decision, to present the matter to the Court for resolution;

e) This procedure will be followed until a new eligibility list is established for each of the cities listed in paragraph four (4), *supra*.

9. DPA will prepare a written minority recruitment plan for the examinations to be given in Boston and Springfield. A detailed outline of the plan will be submitted to plaintiffs by February 15, 1980, and will contain a draft of the posters, announcements and other recruitment literature. The final plan will be submitted to plaintiffs by March 1, 1980, and the implementation of the plan shall begin no later than March 15, 1980.

10. DPA will contact Roscoe J. Hamby, Jr., Director of the Labor Recruitment Program, International Association of Firefighters, for the purpose of retaining his participation in the recruitment drives for the 1980 examinations. DPA will promptly notify plaintiffs of the results of all contacts made with IAFF.

11. For the examinations to be given in cities other than Boston and Springfield, DPA will prepare a written recruitment plan and provide plaintiffs a detailed outline at least 120 days prior to the scheduled date and the final plan no later than 90 days prior to the last date for acceptance of applications. Implementation of the plan will begin no later than 90 days prior to the last date for acceptance of applications.

12. DPA will prepare written recruitment plans for at least the next three (3) administrations of statewide firefighter examinations or examinations in each city listed in paragraph (4) *supra*, or until the minority representation in that city's fire department reaches parity with the minority population of

that city. Such future recruitment plans will be submitted to plaintiffs at least four (4) months prior to the examination date, and implementation of the plan shall begin no later than three (3) months prior to the last date for acceptance of applications.

13. In firefighter examinations to be administered during 1980 the deadline for applications will be no greater than fifteen (15) days prior to the examination date.

14. When a new firefighter eligibility list is established for the City of Boston, DPA will certify three (3) minority candidates for every one (1) non-minority candidate for such time as is necessary for the City of Boston to achieve any appointment goals as may be set forth in a separate stipulated agreement between plaintiffs and the City of Boston, which is incorporated herein by reference. The obligation of DPA to certify minority candidates at a three-to-one (3:1) ratio is not limited to the eligibility list established as a result of the June, 1980 examination but applies to all future eligibility lists in the City of Boston until the City has fulfilled its appointment goals as set forth in the separate stipulated agreement.

15. If the number of minority persons appearing on eligible lists to the Cities of Boston and Springfield resulting from the June 28, 1980 firefighter examination are going to be depleted prior to the expiration of said list so as to make certification in accordance with the ratios set out in paragraphs 8-12 of the Court's February 8, 1974 decree, and paragraph 14, *supra*, impossible, DPA shall give another firefighter exam, forthwith.

In determining the number of minority persons on an eligible list, such persons who have been certified previously will not be counted as certifiable candidates unless they were certified before and, although willing to accept, were not reached for processing by the appointing fire department or, were previously certified and have successfully appealed a prior medical, physical or other disqualification.

16. The plaintiffs shall furnish DPA, in a separate letter, a list of elements which they believe should be included in DPA's recruitment plan for the examination to be administered on June 28, 1980.

17. The State Defendants will pay to the Massachusetts Advocacy Center the sum of $2,131.90 and to Western Massachusetts Legal Services, Inc. the sum of $2,131.90 as attorney's fees in full settlement of all attorneys fees entitlement from the issues addressed in plaintiffs' motion for further relief. The State Defendants' payment of these fees shall not be construed to constitute a waiver of defendants' objection and opposition to plaintiffs' motion for attorneys fees now pending before this Court. The State Defendants' objection and opposition to plaintiffs' entitlement to attorneys fees and to the amount of those fees is specifically reserved and further the State Defendants have not altered or waived their position that this action was not a pending case for the purpose of an award of attorneys fees under the Civil Rights Attorneys Fees Act. Any portion of said fees not paid by January 1, 1981 shall bear interest at the rate of 8% from August 1, 1980.

Agreed to as to form this 1st day of February 1980.

Approved, Entered and so Ordered by:

/s/_____
Frank H. Freedman
United States District Judge

Dated: March 12, 1980

PLAINTIFFS' MOTION TO MODIFY PRIOR REMEDIAL ORDERS

Pursuant to Rule 60(b) of the Federal Rules of Civil Procedure, plaintiffs move for an order, in the form attached hereto, of modification of prior remedial orders entered by this Court. Pursuant to local rule 12(c), plaintiffs hereby request oral argument on this motion. Plaintiffs believe that two hours will be sufficient for all parties to be heard.

STIPULATION

Plaintiffs and defendants herein hereby stipulate to the following facts relating to this Court's determination of the pending Motion to Modify Prior Remedial Orders. The parties reserve the right to present to the Court additional facts by affidavit or other means.

1. Since 1974, the Boston Fire Department has hired a total of 553 sworn personnel.

2. Of these, 248 are black and Hispanic, representing forty-five (45) percent of the sworn personnel hired since 1974.

3. The following chart shows annual hiring by the Boston Fire Department since 1974:

	Total Hired	Blacks and Hispanics Hired	Percent Blacks and Hispanics Hired
1976	79	34	43 percent
1977	198	90	45 percent
1978	179	87	49 percent
1979	52	27	52 percent
1980	45	10	22 percent

4. On July 7, 1981, the Boston Fire Department employed a total of 1690 sworn personnel, of whom 248 (14.7 percent) are black or Hispanic.

5. According to the *Advance Reports 1980 Census of Population and Housing: Final Population and Housing Unit Counts* issued by the Bureau of the Census and the United States Department of Commerce, minorities constitute 30 percent of the population of the City of Boston.

6. On July 8, 1981, the Boston Fire Department commenced a systematic program of reductions in force of sworn

personnel in order to meet what the City of Boston asserts to be a fiscal crisis. This program has proceeded and is intended by City and Fire Department officials to proceed as set forth in this stipulation.

7. On July 8, 1981, 27 sworn personnel in the Boston Fire Department, of whom 7 (26 percent) are black or Hispanic, were removed from the payroll. (Exhibit A). As a result of this reduction in force, the total number of sworn personnel in the Boston Fire Department was 1663, of whom 241 (14.5 percent) are black or Hispanic.

8. On July 15, 1981, 49 sworn personnel in the Boston Fire Department, of whom 25 (51 percent) are black or Hispanic, were removed from the payroll. (Exhibit B). As a result of this reduction in force, the total number of sworn personnel in the Boston Fire Department was 1614, of whom 216 (13.4 percent) are black or Hispanic.

9. On July 22, 1981, 41 sworn personnel in the Boston Fire Department, of whom 13 (31.7 percent) are black or Hispanic, were removed from the payroll. (Exhibit C). As a result of this reduction in force, the total number of sworn personnel in the Boston Fire Department was 1573, of whom 203 (12.9 percent) are black or Hispanic.

10. On July 29, 1981, 38 sworn personnel in the Boston Fire Department, of whom 23 (60.5 percent) are black or Hispanic, were removed from the payroll. (Exhibit D). As a result of this reduction in force, the total number of sworn personnel in the Boston Fire Department is 1535, of whom 180 (11.7 percent) are black or Hispanic.

11. The City of Boston has prepared a schedule for additional lay-offs of sworn personnel in the Fire Department to occur in groups by class, on a weekly basis. This plan for additional reductions in force will be implemented as follows:

(a) On or by August 5, 1981, 18 additional sworn personnel, of whom 13 (72.2 percent) are black or Hispanic, will be re-

moved from the payroll leaving 1517 sworn personnel in the Department, of whom 167 (11 percent) are black or Hispanic.

(b) On or by August 12, 1981, 34 additional sworn personnel, of whom 32 (94.1 percent) are black or Hispanic, will be removed from the payroll, leaving 1483 sworn personnel in the Department, of whom 135 (9.1 percent) are black or Hispanic.

12. The collective bargaining agreement between the City of Boston and Local 718 of the International Association of Firefighters contains no express provisions as to the manner in which layoffs are to be accomplished.

13. The Boston Fire Department intends the reduction in force referenced above to comply with the provisions of Mass. Gen. Laws ch. 31, §§ 39 and 41.

Dated: July 29, 1981

General Orders
No. 53

Headquarters, Fire Department
July 6, 1981

TERMINATION NOTICES

Due to Proposition 2½ which must be absorbed by all City departments and the lack of any definite State Aid to the City of Boston, I regretfully announce the following:

As of 0800 hours, Wednesday, July 8, 1981, the following named members will be terminated from their position of Fire Fighter:

Richard B. Gordon	Engine Company 29
Michael P. Finn	Engine Company 8
Stephen P. Creamer	Engine Company 56
Patrick J. Brady, Jr.	Engine Company 53
Paul F. Nemes	Rescue Company 2
Robert E. Martin	Engine Company 36
David W. McCann	Engine Company 30
Thomas F. Kelly	Engine Company 8
John P. Hillery	Engine Company 56
John B. Moran, Jr.	Engine Company 34
Daniel B. Mahoney	Engine Company 40
David J. Cushing	Engine Company 5
Edward S. Saniuk	Ladder Company 30
Francis C. Prendergast	Engine Company 29
William J. Meyer	Ladder Company 6
Dennis L. McNally	Ladder Company 30
Thomas J. Hale	Ladder Company 22
Stuart B. Gear	Engine Company 1
Bernard T. Smith	Ladder Company 2
Robert J. Williams, Jr.	Engine Company 32
Leo P. Hughes	Engine Company 24
Ronald Carroll	Engine Company 56

Thomas K. Sylvester	Engine Company 33
Moses Pitts	Engine Company 50
Paul D. Fountaine	Engine Company 14
Michael A. Chavannes	Ladder Company 18
Daniel J. Kenneally	Engine Company 14
Llewellyn H. Bryant	Ladder Company 19

As of 1700 hours, Tuesday, July 7, 1981, the following named members will be terminated from their position:

Lineman John P. Fleming	Fire Alarm Division
Lineman John V. Frechette	Fire Alarm Division
Lineman James Mantville	Fire Alarm Division
Batteryman Daniel J. Morrill	Fire Alarm Division
Leather & Canvas Worker Paul S. Kabachus	Maintenance Division
Maintenance Mechanic Painter Paul W. Rivard	Maintenance Division
Maintenance Mechanic Painter Peter Massaro	Maintenance Division
Maintenance Mechanic Carpenter Paul R. Vogel	Maintenance Division

General Orders
No. 56

Headquarters, Fire Department
July 13, 1981

TERMINATION NOTICES

Due to Proposition 2½ which must be absorbed by all City departments and the lack of any definite State Aid to the City of Boston, I regretfully announce the following:

As of 0800 hours, Wednesday, July 15, 1981, the following named members will be terminated from their position of Fire Fighter:

Walter A. McPherson	Ladder Company 18
John M. Gallagher	Aerial Tower # 1
George H. Clark	Ladder Company 14
Patrick F. Foley, Jr.	Engine Company 36
Jairo Guzman	Engine Company 33
James L. Odom	Engine Company 11
Carey W. Havard	Engine Company 8
John L. Collins	Engine Company 4
Carlton E. Grady	Engine Company 30
Thomas P. Bell	Ladder Company 17
Daniel P. Delgardo	Engine Company 32
Steven C. Waldron	Ladder Company 6
Steven V. Swinson	Ladder Company 23
Thomas W. Russell	Ladder Company 17
Waymon Martin	Engine Company 9
David M. Pfeil	Ladder Company 2
Wendell Moy	Engine Company 5
Lawrence P. O'Donnell	Engine Company 48
Wayne C. Pearson	Engine Company 55
Paul J. Murphy	Engine Company 34
Jose R. Marichal	Engine Company 12
James F. Murphy	Engine Company 34

Marshall A. Smith	Engine Company 45
Peter A. Laizza	Ladder Company 16
Edwin Slater	Engine Company 42
John P. Joyce	Engine Company 11
Lawrence D. Kimble	Engine Company 51
Francis G. Jones	Ladder Company 26
George A. Gilchrist	Ladder Company 21
Edward J. Hobin	Ladder Company 15
Shelton Coats	Engine Company 20
James F. Gallagher	Ladder Company 2
Joseph M. Townes	Engine Company 4
Kevin J. Foley	Ladder Company 22
William J. Doherty	Ladder Company 8
Willie J. Davis	Engine Company 2
Richard G. Daley	Engine Company 29
Rudolph E. Edwards	Engine Company 49
Francis J. Orlandi	Ladder Company 26
Gerald Regnier	Engine Company 36
Richard F. Cook	Engine Company 53
Eric C. Watson	Engine Company 34
Gerard W. Buckley	Engine Company 14
Michael J. Arruda	Ladder Company 8
George E. Howard	Engine Company 40
Gary J. Miller	Engine Company 17
James Wright	Engine Company 3
Robert J. Greene	Engine Company 11
John Boswell	Engine Company 4

Members being terminated shall return all Department issue to the Training Division where they will be tagged and identified.

Members will be responsible for the return of their Department issue, such as fire helmet, coat, boots, mask face piece, uniform jacket, dress hat and corporation badge.

By order of Fire Commissioner/Chief George H. Paul

General Orders
No. 60

Headquarters, Fire Department
July 20, 1981

TERMINATION NOTICES

Due to Proposition 2½ which must be absorbed by all City Departments and the lack of any definite State Aid to the City of Boston, I regretfully announce the following:

As of 0800 hours, Wednesday, July 22, 1981, the following named members will be terminated from their position of Fire Fighter:

Leo D. Stapleton, Jr.	Engine Company 10
Richard N. McSweeney	Ladder Company 26
Carl W. Johnson	Ladder Company 11
James M. Foley	Engine Company 34
Francis J. Brown	Ladder Company 4
William A. Tobin	Ladder Company 29
Jame[illegible] D. Townes	Engine Company 40
Garret M. Stapleton	Engine Company 7
Ronald D. McCray	Engine Company 20
Kenneth R. D'Ambra	Engine Company 24
Antonio P. Timberlake	Ladder Company 8
John F. Kenney	Ladder Company 30
Fred Hunt	Engine Company 5
Joseph A. Kelley	Engine Company 24
Harold A. Bodden	Engine Company 55
James C. Feeney	Rescue Company 2
Robert P. Driscoll	Engine Company 7
Alvin A. Smith	Engine Company 53
John P. Bergamo	Ladder Company 1
Rodney W. Brooks	Engine Company 5
Paul C. Griffin	Ladder Company 17
Derek M. McMillan	Ladder Company 25
Robert L. Quinn	Ladder Company 21

Wilfredo Martinez	Engine Company 26
Michael J. Kelly	Ladder Company 2
Kevin M. Kelley	Ladder Company 8
Thomas R. Woods	Engine Company 12
William F. McCarthy	Engine Company 4
Ronald P. White	Engine Company 29
John Kisielius	Engine Company 17
Frederick C. Foster	Engine Company 36
Gerard J. Graul	Engine Company 33
Warren C. Whitaker	Engine Company 51
William T. Scannell	Ladder Company 22
Robert J. Gallagher	Engine Company 52
Michael G. Aylward	Ladder Company 16
Stephen J. Cummings	Aerial Tower # 1
Edward J. Coen	Engine Company 51
David R. Granara	Engine Company 9
Michael A. Grinkley	Ladder Company 15
Dwight Brown	Engine Company 33

Members being terminated shall return all Department issue to the Training Division where they will be tagged and identified. Members will be responsible for the return of their Department issue, such as fire helmet, coat, boots, mask face piece, uniform jacket, dress hat and corporation badge.

By order of Fire Commissioner/Chief George H. Paul

THE POLICE CASE

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

PEDRO CASTRO, ET AL

v. CIVIL ACTION No. 70-1220-W
No. 74-2982-C

NANCY B. BEECHER, ET AL

CONSENT DECREE

In accordance with the Opinion and Order of this Court, dated January 7, 1975, and with the assent of counsel, the Court hereby enters this Consent Decree.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED BY THE COURT AS FOLLOWS:

PRESENT CERTIFICATIONS

1. The Director of Civil Service (hereinafter Director shall mean the Director and his successors, or after July 1, 1975, the Personnel Administrator and his successors) shall on July 8, 1975 establish groups of police candidates in accordance with

Paragraph 2 of this Consent Decree, rank candidates within each group in accordance with Paragraph 3 of this Consent Decree, and certify police candidates as eligible for appointment to each appointing authority subject to Civil Service in accordance with Paragraph 4 of this Consent Decree.

2. The Director shall establish the following groups:

i. Group A shall consist of all Black and Spanish-surnamed applicants who failed any of the 1968-70 Police Entrance Examinations, but passed the 1972 Interim Police Entrance Examination and are otherwise qualified for appointment on the basis of existing requirements.

ii. Group C shall consist of all Black and Spanish-surnamed persons, excluding those in Group A, who passed the 1972 Interim Police Entrance Examination and are otherwise qualified for appointment on the basis of existing requirements.

iii. Group D shall consist of all other persons, excluding those in Groups A and C, who passed the 1972 Interim Police Entrance Examination and are otherwise qualified for appointment on the basis of existing requirements.

The eligible lists for all three groups shall expire on January 4, 1976. However, the City of Boston shall make no police officer appointments and accept no police officer transfers prior to January 5, 1976. If the eligible list based on the Examination scheduled to be administered in October, 1975 is not established by January 5, 1976, or if other circumstances prior to January 5, 1976 lead the City of Boston to believe it must hire, the City of Boston reserves its right to move this Court to authorize police officer appointments from the eligible list based on the 1972 Interim Police Entrance Examination. All parties fully anticipate that in the event the City of Boston is permitted to hire from the eligible list based on the 1972 Interim Police Entrance Examination after July 7, 1975, if the plaintiffs and the City of Boston cannot themselves agree upon compensatory relief, this Court shall order such limited addi-

tional compensatory relief beyond certification of one candidate from Group A for every candidate from Group B after the eligible list for the Examination scheduled to be administered in October, 1975, is established as it deems appropriate.

3. The Director, if petitioned by an appointing authority prior to certification to impose a residency preference pursuant to c. 31, s. 48A, shall impose such residency preference within each of the three groups described in Paragraph 3 of this Consent Decree.

4. The Director shall certify policy applicants as follows:

i. In response to requisitions submitted by appointing authorities, candidates shall be certified on the basis of one candidate from Group A for every candidate certified from Group D until the list of candidates in Group A is exhausted.

ii. Upon the exhaustion of Group A, candidates shall be certified to requisitioning appointing authorities on the basis of one candidate from Group C for every three candidates certified from Group D, until the candidates in Groups C and D are exhausted.

iii. Should a candidate qualify to be placed into Groups A, C or D after exhaustion of the Group for which he is eligible, said Group will be revived for purposes of affording the candidate the position he would have enjoyed.

iv. The Director shall not certify or approve appointments for positions of reserve police officer on any new or existing police reserve list.

5. The Director shall disapprove any appointment unless the appointing authority has furnished said Director with a written statement of the reasons for rejecting the appointment of any candidate higher on the list. Said Director shall furnish a written statement of these reasons to the plaintiffs' attorneys, and also to the candidate upon written request of the candidate.

RECRUITMENT

6. At least ninety (90) days prior to the administration of each future police entrance examination, the Director shall submit to the parties a plan detailing the Director's proposed affirmative program to recruit Black and Spanish-surnamed applicants. Said recruitment program shall include public statements, advertising in the media of press, radio, and television, direct contact with minority organizations; and, in advance of the Examination scheduled to be administered in October, 1975, training to prepare minority candidates to pass said Examination, provided that the Director receives an anticipated grant for minority recruitment from the United States Law Enforcement Assistance Administration. Said program shall also include a report containing, for each appointing authority, the number and percentage of Black and Spanish-surnamed police officers, provided that the report of the racial composition of each appointing authority may be submitted to the parties as late as thirty (30) days prior to administration of the Examination scheduled for October, 1975. The plaintiffs shall have fifteen (15) days to object to the Director's program. The Director shall have five (5) days to respond to plaintiffs' objections, if any, to the Director's program. Any dispute between the parties regarding the recruitment program, which cannot be resolved, will be resolved by this Court upon motion of any party. Any objection to the recruitment program, not made in writing within fifteen (15) days, shall be deemed to have been waived.

FUTURE EXAMINATIONS

7. The Director, in implementing this Consent Decree, shall administer on or before October 19, 1975 (hereinafter the

October Exam) a police written examination battery as described in a letter dated June 27, 1975 from the Director of Civil Service, Edward W. Powers, to the Attorney General of the Commonwealth of Massachusetts, Francis X. Bellotti, a carbon copy of which has been received by Thomas Mela, Esq. The contents of this letter, which identifies and explains the use of each examination component including the "ranking", "flagging" and "literacy" components shall remain confidential until after the administration of the October Exam so as not to compromise the security of said examination. Said Examination shall be administered to all police officer applicants to appointing authorities within the jurisdiction of Civil Service. Said Examination shall be administered only after said Director has satisfied the recruitment obligations imposed by Paragraph 6 of this Consent Decree.

8. The plaintiffs take no position with respect to the validition of the October Exam but agree to its use to establish an eligible list for the purpose of implementing this Consent Decree. The plaintiffs do not agree to administration of the October Exam after its administration in October, 1975, and the Director agrees that no police entrance examination shall be administered in the future unless it has been validated in conformity with the Testing Guidelines of the Equal Employment Opportunity Commission, 29 C.F.R. s. 1607.1, et seq.

9. With respect to the administration of the October Exam, the cut-off score for determining which candidates have passed said Exam will be set by agreement of the parties. The plaintiffs or the Director may submit the question of the appropriate cut-off scores on the "ranking" and "flagging" components of said Exam and, relative to the "flagging" instrument, the manner in which applicants may be subjected to further individualized psychological "screening," to this Court for resolution. In any event, the cut-off scores and "screening" should be set so that the method and ratios of cer-

tification described in Paragraph 23 of this Consent Decree can be implemented.

10. If subsequent to the administration of the October Exam it appears that pools A or B in Paragraph 21 below are inadequate or will become depleted so as to prevent the effectuation of the method and ratios of certification described in Paragraph 23 of this Consent Decree, the Director shall administer a second police entrance examination. It shall be left to the parties or the Court, upon motion of any party, to determine what examination will be given, which candidates will be eligible to take the examination, and the time period within which the examination will be given, provided that this Paragraph shall not effect the authority of the Director to select and hold regularly scheduled police entrance examinations in contemplation of the expiration of an eligible list as provided by Massachusetts law.

11. Spanish-surnamed applicants for the October Exam will be given the option of taking said Exam in Spanish. However, the Director shall require such persons who take said Exam in Spanish to pass a literacy test to demonstrate their ability to read and write the English language.

12. Within thirty (30) days after the administration of said literacy test, the Director shall submit to the parties a report showing the number of individuals who took the October Exam in Spanish, and the pass/fail rate of those individuals on the literacy test.

13. All candidates who take the October exam shall be informed, individually, and in writing, prior to the time that eligibility lists are established, that they are required to meet the following criteria before they can be appointed:

a. Receive a passing mark on the October Exam. Those individuals who take the October Exam in Spanish must pass the literacy test.

b. Pass a medical examination. It will be noted that said medical examination will be available for inspection at the office of the Director.

c. Be determined by the Director to be of good moral character. It will be noted that a copy of the Standards and Procedures for the Screening of Ex-offenders will be available for inspection at the office of the Director.

d. Provide a certificate of birth or other evidence of date and place of birth satisfactory to the Director.

Further, each candidate shall receive, at the time provided above:

e. A list of all appointing authorities which require an applicant to have a driver's license.

f. A list of all appointing authorities which have a minimum height requirement.

g. A list of all appointing authorities which require an applicant to pass a swim test.

The Director fully anticipates funding the the United States Law Enforcement Assistance Administration with which to employ a College Intern during twenty (20) hours per week for the life of the eligibility list based on the October Exam, who will be responsible for establishing and maintaining contact with Black and Spanish-surnamed candidates and for assisting said candidates to satisfy the criteria described in this Paragraph.

14. The eligibility list established as a result of the October Exam shall be established within six (6) months of said Exam and shall expire two years from the date said list is first established.

15. Nothing in this Consent Decree shall be construed to limit the authority of the Director to delegate the administration of Civil Service functions so far as practicable to the cities and towns, nor to limit the right of the plaintiffs to move this Court to modify any entrance requirement with the exception

of the October Exam itself, whether imposed or delegated by the Director, provided that any Black or Spanish-surnamed person who failed a Police Entrance Examination administered by the Director between 1968 and 1970 and was then eligible on account of age shall be eligible to take the October Exam, notwithstanding his failure to meet the current age requirements.

16. At each future police entrance examination (which, hereinafter, shall include the said October Exam), the Director shall require all candidates for police officer positions to provide under penalty of perjury the following information: Whether the candidate is (a) caucasian (white); (b) black; (c) Spanish-surnamed (i.e., the candidate was born in a Spanish-speaking country or if the candidate was raised in a home where the primary language was Spanish); (d) other. Within sixty (60) days after the administration of each future police entrance examination, the Director shall furnish the parties with a summary of the racial composition of the candidates examined.

17. Within sixty (60) days after each future police entrance examination has been graded, the Director shall submit a report to the parties showing the results by race of all persons taking said examination, and the name, address, and grade of each Black or Spanish-surnamed individual. The parties shall also receive an item analysis of the results of the said examination, by race.

18. The Director shall notify the plaintiffs and supply evidence to the plaintiffs whenever a particular appointing authority has informed the Director that it has achieved a complement of Black and Spanish-surnamed post-probationary police officers commensurate with the percentage of minorities within the community or that the appointing authority is serving a jurisdiction with less than one per cent (1%) Black and Spanish-surnamed population. The plaintiffs

shall have thirty (30) days to object to the evidence contained in the Director's notification. If such objection is not made within thirty (30) days the particular appointing authority will no longer be subject to Paragraph 23 of this Consent Decree, and certification to that appointing authority will be made according to existing Massachusetts law. Any disputes between the parties in this regard which cannot be resolved by the parties will be resolved by this Court upon motion by any of the parties.

19. Following establishment of the eligibility list based on each future police entrance examination, and every six (6) months thereafter, plaintiffs will be furnished with a copy of the eligibility list for each appointing authority subject to the jurisdiction of the Director. Further, plaintiffs will receive from the Director the following information:

On a monthly basis:

(a)) A copy of the requisition, certification, and report on certification for each requisitioning appointing authority.

(b) The name of each Black and Spanish-surnamed candidate from said eligibility list whose employment is terminated.

(c) The name of each police officer whose transfer between appointing authorities has been approved by the Director subsequent to the date of this Consent Decree.

Every three months:

(d) The name and address of each Black and Spanish-surnamed candidate who has passed a future police entrance examination, including the status of each such candidate's elibility, and, if any such candidate is ineligible, the reasons therefor.

FUTURE CERTIFICATIONS

20. Subsequent to obtaining the results of each future police entrance examination, the Director shall promptly establish groups of police candidates in accordance with Paragraph 21 of this Consent Decree, rank candidates within each group in accordance with Paragraph 22 of this Consent Decree, and certify police candidates as eligible for appointment to each appointing authority subject to Civil Service in accordance with Paragraph 23 of this Consent Decree.

21. The Director shall establish the following groups:

i. Group A shall consist of all Black and Spanish-surnamed applicants who pass a future police entrance examination and are otherwise qualified for appointment on the basis of existing requirements.

ii. Group B shall consist of all other persons who pass a future police entrance examination and are otherwise qualified for appointment on the basis of existing requirements.

Eligible lists shall expire two years from the date of their establishment.

22. The Director, if petitioned by an appointing authority prior to certification to impose a residency preference pursuant to c. 31, § 48A, shall impose such residency preference within each of the two groups described in Paragraph 21 of this Consent Decree.

23. The Director shall certify police applicants as follows:

i. In response to requisitions submitted by the appointing authorities of the cities of Boston and Springfield, candidates shall be certified on the basis of one candidate from Group A for every candidate certified from Group B.

ii. In response to requisitions submitted by all other appointing authorities subject to Civil Service, candidates shall

be certified on the basis of one candidate from Group A for every three candidates from Group B.

iii. Should a candidate qualify to be placed into Group A or Group B after exhaustion of the Group for which he is eligible, said Group shall be revived for purposes of affording the candidate the position he would have enjoyed.

iv. Should an appointing authority fail to offer an appointment to a candidate, the Director shall disapprove any appointment unless said appointing authority has furnished said Director with a written statement of the reasons for rejecting the appointment of any candidate higher on the list. Said Director shall furnish a written statement of those reasons to the plaintiffs' attorneys, and also to the candidate upon written request of the candidate.

v. Should there be any modification of Rule 14 of the Civil Service Rules, the parties shall monitor the effect of any such change on the purposes and intent of said Decree for a period of six months. If, at the end of this time, any party is of the opinion that such modification of Rule 14 is frustrating the implementation of the method and ratios of certification described in this Paragraph, the parties will enter into negotiations to modify the method and ratios of certification or other aspects of this Consent Decree in order to effectuate the compensatory relief of said Decree. If, after the six month period has elapsed, the parties cannot themselves agree upon such modifications in said Decree, this Court shall order such additional compensatory relief beyond the method and ratios of certification as described in this Paragraph as it may deem appropriate.

24. The method and ratios of certification described in Paragraph 23 of this Consent Decree shall apply to all eligibility lists established subsequent to future police entrance examination, and shall apply to all cities and towns subject to Civil Service law which have a minority population of one per

cent (1%) or more and shall apply to the Capitol Police, the M.B.T.A. Police and the M.D.C. Police. As a city or town achieves a complement of minorities commensurate with the percentage of minorities within the community, certification will be made according to existing Massachusetts law, and as the Capitol Police achieves a complement of minorities commensurate with the percentage of minorities within the City of Boston, and the M.B.T.A. Police or the M.D.C. Police achieves a complement of minorities commensurate with the percentage of minorities within the jurisdiction served by the M.B.T.A. Police or the M.D.C. Police, certification will be made in accordance with existing Massachusetts law, provided that appointing authorities under the jurisdiction of Civil Service shall, pursuant to this Paragraph, be exempted only from subparagraphs i, ii, iii, and v of Paragraph 23 of this Consent Decree.

25. The Court retains jurisdiction of this case.

/s/ _____
CAFFREY, C. J.

Dated: June 27, 1975

SUPPLEMENTAL CONSENT DECREE

This Court, having approved and entered a Consent Decree in this action on July 7, 1975, to allow a new police officer entrance examination to be given, and said examination having been given in October, 1975, the parties agree to this Supplemental Consent Decree to permit the marking of said examination and the establishment of an eligibility list for the position of police officer in the Commonwealth of Massachusetts.

The parties agree that:

1. In accordance with the criteria set forth in Paragraph 18 of the July 7, 1975, Consent Decree and on the basis of (1) 1970 United States Census Bureau population figures for Massachusetts cities and towns, as supplemented by both the 1973 United States Census Bureau figures and the 1974 Massachusetts Secretary of State's Census of Spanish-speaking population and (2) data provided by each of the Commonwealth's police departments, regarding the percentage of Black and Spanish-speaking police officers in each such police department, those 81 police departments listed in defendant's letter to plaintiffs, dated June 8, 1976, shall no longer be subject to the method and ratios of certification described in Paragraph 23 of the July 7, 1975, Consent Decree.

2. All applicants who achieved a score of 61% or higher will be deemed to have passed the October, 1975, police examination. The Division's rationale for setting the passing score at 61% is set forth in Attachment A.

3. The Division recognizes that the police examination administered in Spanish was not correctly translated from English into Spanish, and thus was a faulty examination. Therefore, the Division agrees that the results of the police examination administered in Spanish are void. The Division recognizes that each candidate who took the examination in

Spanish had to also pass a literacy test. The Division agrees to retest the 102 candidates who took the examination in Spanish and received a passing score on the literacy test. The re-examination will be given on or about June 19, 1976, and the passing score for the examination will be 61%.

4. The Division agrees to administer another police officer entrance examination in the city of Springfield, as soon as it becomes evident that there will not be sufficient names to meet the method and ratios of certification described in Paragraph 23 of the July 7, 1975, Consent Decree. The Division will immediately canvass the list of eligible minority candidates to determine the number who actually are willing to accept appointment to the Springfield Police Department. The test will be the IPMA Police Examination and the passing score will be the same as the one set as a result of the October, 1975, police officer entrance examination (i.e. 61%). The Division agrees to undertake a minority recruitment effort in order to attract qualified candidates. In determining whether or not a new test must be given, the Division will take into account the anticipated vacancies in the Springfield Police Department as well as the number of successful minority candidates on the October, 1975, police officer entrance examination who, in response to the said canvass, affirmatively indicate a willingness to accept employment with the Springfield Police Department. A second police examination will be given in other jurisdictions, if necessary, in accordance with Paragraph 10 of the July 7, 1975, Consent Decree.

5. With the exception of police departments which are no longer subject to the method and ratios of certification described in Paragraph 23 of the July 7, 1975, Consent Decree, the Division shall certify names of minority candidates based on the ratio of one minority to three individuals who are currently employed in less than full-time capacity with a police department. Thus, in effect, when a full-time vacancy occurs

on a police force, three individuals currently on the reserve roster will be certified with one minority from the list established as a result of the October, 1975, police examination.

6. The Division agrees that once an individual receives a full-time appointment from any list established as a result of the October, 1975, police examination, that individual's name will be removed from all other police lists. Thus, in effect, an individual who accepts employment in any police department will be immediately removed from all other such police lists.

7. In accordance with Paragraph 13 of the July 7, 1975, Consent Decree, the Division agrees to conduct a follow-up program regarding all minority candidates who pass the October, 1975, police examination, to insure that said candidates are kept apprised of their status with regard to the eligible list, including individual notices regarding failure to satisfy the criteria set forth in said Paragraph 13. The Division agrees to apply for LEAA funds in order to accomplish this follow-up. However, in the event that funds are not forthcoming from LEAA, the Division hereby agrees to use its own resources in conducting this program.

8. The Division shall require that police departments submit to the Division a list of proposed appointees from a certification. The Division will screen each proposed appointee to make sure that he meets the requirements set forth in the Standards and Procedures for the Screening of Ex-Offenders, provided that the Division will exclude, prior to certification, in accordance with M.G.L. c. 41, § 96A, any candidate known to be a felon who has not been granted a pardon therefor. A proposed appointee who is removed from the eligibility list will be replaced on the certification, in conformity with the method and ratios of certification described in Paragraph 23 of the July 7, 1975, Consent Decree. An individual who may be removed from the eligibility list by the

Division shall first be notified in writing of his right to a hearing before the Personnel Administrator or his delegate, and then be notified in writing of his right to a hearing upon appeal before the Civil Service Commission.

9. The Division shall administer a medical examination to each applicant being considered for certification. An applicant who fails said examination shall be removed from the eligible list and shall have the right to be tested by a Medical Review Board. At the time of his failure of his first examination, said applicant shall be informed in writing, of the right to be retested by a Medical Review Board. An applicant who, after failing his first medical examination, appeals to the Medical Review Board and is found medically unfit by the Medical Review Board, shall be removed from the list of those applicants being considered for certification, provided that an applicant may file his appeal to the Medical Review Board at any time within six months of the date of the original medical examination, and further provided that appeals will be processed and completed within thirty days of the time an appeal is filed. An applicant who fails a medical examination administered by an appointing authority according to guidelines promulgated by the Division, shall be removed from the list of applicants eligible for appointment and shall be so notified. Such applicant may file an appeal to the Medical Review Board at any time within six months of the date of the medical examination administered by the appointing authority. That appeal shall be processed and completed within thirty days of the time the appeal is filed. Approval of appointments made by an appointing authority shall not be delayed pending appeal.

10. The Division shall provide individual applicants with their score on the police examination administered in October, 1975, but shall not give the scores of an individual or groups of individuals to an appointing authority.

11. Should an appointing authority whose department is not listed in defendant's letter to plaintiffs, dated June 8, 1976, fail to offer an appointment to a candidate, the Division shall disapprove any appointment unless said appointing authority has furnished said Division with a written statement of the reasons for rejecting the appointment of any candidate higher on the list. Said Division shall furnish a written statement of the reasons to the plaintiffs' attorneys, and also to the candidate upon request of the candidate.

12. The parties agree to meet periodically to review the implementation of this Supplemental Consent Decree, including consideration of the effect of post-certification procedures and tie scores on the method and ratios of certification described in Paragraph 23 of the July 7, 1975, Consent Decree.

Agreed to this 8th day of June 1976.

CAFFREY, C.J.

July 13, 1976

ATTACHMENT A

(See Paragraph 2 of Attached Supplemental Consent Decree)

The Division hereby states that the reasons for setting the passing score at 61 on the October, 1975, police officer entrance examination are as follows:

1. The guidelines on employee selection procedures established by the Equal Employment Opportunity Commission provide that cut-off scores on examinations should normally be set so as to be reasonable and consistent with normal expectations or proficiency within the work force. Other facts may also be considered in determining cut-off scores including the relationship between the number of vacancies and the number of applicants and the degree of adverse impact.
2. The validation study which was conducted in conjunction with the IPMA police examination showed that the marks on the police officer's examination were considerably higher than the marks on the IPMA firefighter entrance examination.
3. The IPMA police examination tested approximately 60% of the cognitive dimensions of the position of Police Officer.
4. The scores on the IPMA police examination have been found to have a positive relationship with job performance and a score of 61 is reasonably consistent with normal expectations of proficiency within the work force.
5. The passing score of 61 provides a sufficient number of candidates in order to set the requirements of the priority pools.

AGREEMENT AS TO MAY, 1978 EXAMINATION

This Court having approved and entered a Consent Decree in this action on July 7, 1975, and a Supplemental Consent Decree on July 13, 1976, and the Defendant Personnel Administrator having given a new police officer entrance examination in May 1978, the parties agree as follows:

1. In accordance with the criteria set forth in paragraph 24 of the 1975 Consent Decree, and on the basis of data provided by each of the Commonwealth's police departments regarding the percentage of Black and Spanish-surnamed police officers in each such department, only those police departments listed in Attachment A shall remain subject to the method and ratios of certification described in paragraph 23 of the 1975 Consent Decree.

2. All applicants who achieved a score of sixty one percent (61%) or higher will be deemed to have passed the May, 1978 police examination.

3. Once an individual receives a full-time appointment from any list established as a result of the May, 1978 police examination, that individual's name will be removed from all other police lists. Thus, an individual who accepts employment in any other police department will be immediately removed from all other police lists.

4. Applicants who took the May, 1978 examination in Spanish and who then took the September, 1978 Spanish reexamination will be certified at the higher scores received.

5. Whenever, pursuant to Personnel Memorandum 78-15 issued by the Personnel Administrator on December 27, 1978, as it may be amended (Attachment B), the Personnel Administrator receives from an appointing authority a proposed plan for medical or psychological/ psychiatric examinations, prior to approval, he will furnish a copy of the plan (including any modifications) to plaintiffs. Plaintiffs will then have not less

than fifteen (15) days to present their written comments, if any, to the Personnel Administrator regarding the plan. Thereafter the Personnel Administrator shall approve or disapprove the plan and shall promptly inform plaintiffs as to his decision.

6. Applicants being considered for certification shall be given a pre-certification medical examination by the Division of Personnel Administration or an appointing authority to whom this function has been delegated, applying the standards promulgated by the Division of Personnel Administration. An applicant who fails either the pre-certification examination or a pre-employment examination administered by an appointing authority applying the standards promulgated by the Division, shall be removed from the list of applicants eligible for appointment, and shall be so notified. Such applicant shall have a right to have his condition reviewed by a Medical Review Board, provided he applies for review at any time within six (6) months of the date of the examination the applicant failed. The application for review shall be processed and completed within thirty (30) days after filing. Certifications and/or approval of appointments made by an appointing authority shall not be delayed pending appeal.

7. The Division of Personnel Administration will give a new police examination for at least the cities of Boston, Holyoke, Lawrence, Springfield, and Worcester not later than December 1, 1979.

8. Within sixty (60) days after the administration of a new police entrance examination for the City of Boston, the Division of Personnel Administration will provide to the Boston Police Department and the plaintiffs, a list of the names and addresses of all candidates taking the examination who claim Boston residency preference. This list will be ranked according to test score and will include information for all candidates claiming status as a veteran, disabled veteran, and/or

minority. The Boston Police Department agrees to supply limited technical data processing and/or clerical assistance to the Division of Personnel Administration to assist in preparing this information within the time limits provided.

It is understood by the parties that the Boston Police Department will use this information to begin the preliminary screening of candidates for appointment, while the plaintiffs and state defendants negotiate the passing score. The Boston Police Department will provide to the Division of Personnel Administration all information concerning candidates from the list necessary or helpful in verifying candidates' age, education, residency, veteran's status, minority status and medical condition, in order to facilitate the early establishment of the eligible list for the City of Boston based upon the new examination. The eligible list for the City of Boston will be established as soon as practicable after agreement on a passing score is reached, and will not be delayed pending establishment of eligible lists for other cities for which the new examination is administered.

9. The Division of Personnel Administration will provide the plaintiffs with detailed results of the new police examination within 60 days of administration, including a copy of the examination and proposed passing score. The plaintiffs and state defendants will then enter intensive negotiations to reach an examination agreement. Lists for the five named cities based on the new police examination will be established within 60 days after that agreement is reached.

10. At least one hundred and twenty (120) days prior to the administration of the new police entrance examination, the Personnel Administrator shall submit to the parties a plan detailing the Personnel Administrator's proposed affirmative program to recruit Black and Spanish-surnamed applicants. The recruitment program shall go into effect at least ninety (90) days prior to administration of the new examination. It

shall include public statements, advertising in the media of press, radio, and television, direct contact with minority organizations; and, in advance of the examination scheduled to be administered in 1979, training to prepare candidates for that examination.

The plaintiffs shall have fifteen (15) days to object to the Personnel Administrator's program. The Personnel Administrator shall have five (5) days to respond to plaintiffs' objections, if any. Any objection to the recruitment program not made in writing within fifteen (15) days, shall be deemed to have been waived.

11. Before initiating recruitment and training for the new examination the Division of Personnel Administration will administer a study designed to determine why a significant number of minority candidates, who were recruited and who signed up to take the May, 1978 examination, failed to actually take that examination. The results of the study shall be forwarded to counsel for the plaintiffs and will be taken into consideration by all parties when recruitment for the new 1979 examination is planned.

12. Should an appointing authority listed in Attachment A fail to offer an appointment to a willing candidate, the Division of Personnel Administration shall disapprove any appointment unless that appointment authority has furnished the Division with a written statement of the reasons for failing to make the appointment of any candidate higher on the list. The Division of Personnel Administration shall furnish a written statement of the reasons to the plaintiffs' attorney, and also to the candidate upon request of the candidate. The Personnel Administrator agrees to notify any candidate removed by same from a certified list, pursuant to Civil Service Commission Rule 15(2), that such action does not affect the candidate's right to be certified to any appointing authority which has not previously requested his removal for the reasons approved by

the Personnel Administrator, and to notify such candidate of his right to appeal to the Civil Service Commission.

13. The Personnel Administrator shall require that the appointing authority for each of the departments named in Attachment A, at the time such appointing authority files its report of the names of candidates to be appointed, certify that it has informed in writing each candidate who appeared for possible appointment of the status of his candidacy (i.e. "bypassed", "removed", or "disqualified").

14. The Personnel Administrator shall require that the appointing authority for each of the departments named in Attachment A, at the time such appointing authority is considering candidates on a certified list, substitute for each candidate in Group A or Group B who does not report his willingness to accept appointment, is disqualified or removed, the next ranked candidate in Group A or Group B, respectively.

15. The Personnel Administrator shall require that the appointing authority for each of the departments named in Attachment A, at the time such appointing authority files its report of the names of candidates to be appointed, certify that it has informed in writing each candidate who was by-passed for appointment that if such candidate believes that the reasons stated for bypass are either untrue or are a pretext for unlawful reasons, and if such information is transmitted to the Personnel Administrator with no resulting action, the candidate may appeal to the Civil Service Commission.

16. The Personnel Administrator shall furnish to the plaintiffs' attorney, three (3) days prior to mailing to the appointing authority, a copy of the certified list to be sent to any of the departments named in Attachment A.

17. The plaintiffs take no position with respect to the validity of the May, 1978 police entrance examination but agree to its use to establish an eligibility list for the purpose of implementing the method and ratios of certification described

in the Consent Decree. The plaintiffs do not agree to future administration of the May, 1978 examination, and the Personnel Administrator agrees that no police entrance examination shall be administered in the future unless it has been validated in conformity with the Uniform Guidelines on employee selection as jointly published by Office of Personnel Management, Equal Employment Opportunity Commission, Department of Labor, Department of Justice and Treasury Department.

18. The eligible list established as a result of the May, 1978 examination shall expire two years from the date the list is first established.

19. The parties agree to meet periodically to review the implementation of this Agreement.

20. The parties agree that any dispute under this Agreement which cannot be resolved by the parties will be resolved by this Court upon the motion of any party.

/s/ _____

Approved, CAFFREY, J.

Dated: May 18, 1979

ATTACHMENT A

Acton
Andover
Attleboro
Bedford
Bellingham
Belmont
Beverly
Billerica
Boston
Bourne
Brockton
Brookline
Burlington
Cambridge
Chelsea
Chicopee
Clinton
Dartmouth
Duxbury
E. Longmeadow
Easthampton
Everett
Fall River
Falmouth
Foxborough
Franklin
Gloucester
Greenfield
Groton
Hanover
Hanson
Haverhill
Holbrook
Holden
Holliston
Holyoke
Hudson
Ipswich
Kingston
Lancaster
Lawrence
Lexington
Leominster
Lowell
Ludlow
Lynn
Marblehead
Marlborough
Marshfield
Medford
Methuen
Natick
Needham
New Bedford
North Adams
North Andover
Northampton
Norton
Palmer
Peabody
Pembroke
Pittsfield
Randolph
Revere
Rockland
Salem
Sandwich
Saugus
Scituate
Sharon
Shrewsbury
Southbridge
South Hadley
Springfield
Stoneham
Stoughton

ATTACHMENT A (*continued*)

Sudbury
Swampscott
Taunton
Tewksbury
Waltham
Wareham
Watertown
Webster
Wellesley
W. Springfield
Westfield
Weston
Westwood
Whitman
Williamstown
Winchester
Winthrop
Woburn
Worcester
MBTA
MDC
Capitol Police

PLAINTIFFS' MOTION TO MODIFY PRIOR REMEDIAL ORDERS

Pursuant to Rule 60(b) of the Federal Rules of Civil Procedure, plaintiffs move for an order, in the form attached herewith, of modification of prior remedial orders entered by this court. Pursuant to local rule 12(c), plaintiffs hereby request oral argument on this motion. Plaintiffs believe that two hours will be sufficient for all parties to be heard.

STIPULATION

Plaintiffs and defendants herein hereby stipulate to the following facts in conjunction with this Court's determination of the pending Motion to Modify Prior Remedial Orders. In so stipulating, the parties expressly reserve their right to contest the materiality or relevance of any fact herein stipulated. The parties reserve their right to present to the Court additional facts by affidavit or other means.

1. According to Boston Police Department records:

(a) Since 1974, the Boston Police Department has hired a total of 492 police officers.

(b) of these, 213 are black and Hispanic, representing forty-three (43) percent of the officers hired since 1974.

(c) The following chart shows annual hiring by the Boston Police Department since 1971:

	Total Hired	*Blacks and Hispanics Hired*	*Percent Blacks and Hispanics Hired*
1971-3	20	0	--
1974	65	26	40 percent
1975	51	22	43 percent
1976-77	0	0	--
1977-78	126	61	48 percent
1979-80	250	104	42 percent

2. On July 6, 1981, the Boston Police Department employed a total of 1912 sworn officers, of whom 224 (11.7 percent) are black or Hispanic.

3. According to the *Advance Reports 1980 Census of Population and Housing: Final Population and Housing Unit Counts* issued by the Bureau of the Census and the United

States Department of Commerce, minorities constitute approximately 29 percent of the population of the City of Boston.

4. On July 7, 1981, the Boston Police Department commenced a systematic program of reductions in force of uniformed police officers. This program has proceeded and is intended by City and Police Department officials to proceed as set forth in this stipulation.

5. On July 7, 1981, 33 sworn personnel in the Boston Police Department, of whom 4 (12.1 percent) are black of Hispanic, were removed from the payroll. (Exhibit A). As a result of this reduction in force, the total number of sworn personnel in the Boston Police Department was 1879, of whom 220 (11.7 percent) are black or Hispanic.

6. On July 14, 1981, 44 additional sworn personnel in the Boston Police Department, of whom 22 (50 percent) are black or Hispanic, were removed from the payroll. (Exhibit B). As a result of this reduction in force, the total number of sworn personnel in the Boston Police Department was 1835, of whom 198 (10.8 percent) are black or Hispanic.

7. On July 21, 1981, 44 additional sworn personnel in the Boston Police Department, of whom 24 (55 percent) are black or Hispanic, were removed from the payroll. (Exhibit C). As a result of this reduction in force, the total number of sworn personnel in the Boston Police Department was 1791, of whom 174 (9.7 percent) are black or Hispanic.

8. On July 28, 1981, 41 additional sworn personnel in the Boston Police Department, of whom 24 (58 percent) are black or Hispanic, were removed from the payroll. (Exhibit D). As a result of this reduction in force, the total number of sworn personnel in the Boston Police Department is 1750, of whom 150 (8.6 percent) are black or Hispanic.

9. The City of Boston has prepared a schedule for additional lay-offs of sworn personnel in the Boston Police Department to occur in groups by class on a weekly basis. This plan

for additional reductions in force will be implemented as follows:

(a) On or by August 4, 1981, 31 additional sworn personnel, of whom 19 (61 percent) are black or Hispanic, will be removed from the payroll, leaving 1719 sworn personnel in the Department, of whom 131 (7.6 percent) are black or Hispanic.

(b) On or by August 18, 1981, 59 additional sworn personnel, of whom 28 (47 percent) are black or Hispanic, will be removed from the payroll, leaving 1660 sworn personnel in the Department, of whom 103 (6.2 percent) are black or Hispanic.

10. The collective bargaining agreement between the City of Boston and the Boston Patrolman's Association contains no express provisions as to the manner in which layoffs are to be accomplished.

11. The Boston Police Department intends the reduction in force referenced above to comply with the provisions of Mass. Gen. Laws ch. 31, §§ 39 and 41.

PEDRO CASTRO, ET AL.
By their attorneys,

Dated: July 29, 1981

EXHIBIT A

BOSTON POLICE

P. O. Box No. 81-141

PERSONNEL ORDER — Lay Off

July 7, 1981

The following employees are separated from service in the Boston Police Department because of lack of money, effective at the close of business July 7, 1981. They retain reinstatement rights, pursuant to Massachusetts General Law, Chapter 31, Section 39.

Police Officer	I.D.#	District
Thomas J. Adams	8450	District D
Lawrence P. Applegate	8451	District C
Philip V. Berte	8453	District B
Thomas P. Boyle	8454	District B
Robert C. Brown	8455	District C
Mark B. Buchanan	8456	District B
Harry A. Byrne, Jr.	8457	District B
Richard P. Caulfield	8458	District C
James M. Cook	8460	District B
Catherine A. Crowley	8130	District A
Dennis E. Doherty	8461	District B
Paul J. Durkin	8463	District B
Richard F. Ford	8465	District B
Sherman C. Griffiths	1246	District B
George W. Higgins	8466	District C
James M. Hussey	8467	District B
John M. Joyce	8468	District E
Stephen P. McGrath	8470	District A
Gerard P. McHale	8471	District A

EXHIBIT A (*continued*)

Police Officer	I.D.#	District
Timothy J. McKenzie	8472	Operations
Louis H. Metaxas	8473	District B
Robert A. Moody	8474	District B
Richard T. Mosey	8475	District B
Kevin T. Mullen	8476	District C
Dale T. O'Donnell	8477	District C
Paul T. Perry	8480	District E
William W. Rivers	6923	District C
John F. Rooney	8482	District B
Thomas F. Rose	8483	District B
Joseph G. Scaringello, Jr.	8484	District E
George C. Thomas	8486	District B
Frances W. Thompson	8487	District C
Joseph J. Zinck	8490	District D

JOSEPH M. JORDAN
Police Commissioner

EXHIBIT B

BOSTON POLICE

P. O. NO. 81-145

PERSONNEL ORDER — Layoff

July 13, 1981

The following-named Police Officers are hereby separated from service in the Boston Police Department because of lack of money, effective at the close of business on Tuesday, July 14, 1981. They retain reinstatement rights, pursuant to Massachusetts General Laws, Chapter 31, Section 39.

Police Officer	I.D.#	Assignment
Gladys R. Acuino	7061	Auto Maintenance Unit, B.A.S.
Deborah P. Austin	8288	District B
Beatrice Barron	8289	Persn. Div., Med. Incap. Sec.
Michael A. Bell	8290	District B
Robert J. Bowes Jr.	8291	District D
Eric R. Braxton	8292	District C
Leon J. Buckley	8293	District B
William F. Carroll	8294	District B
Paul C. Cato	8295	District B
John J. Connolly	8296	District A
Timothy V. Connors	8297	District C
Anthony G. Corbett	8298	M.O.F.
Linda B. Cowan	8299	District A
Diana M. Dozier	8301	District B
George F. Egan	8303	District B
John W. Glenn, Jr.	8304	District D
Russell J. Grant	8306	District C
John A. Ham	8308	District B
Kathleen M. Horton	8309	District A

EXHIBIT B (*continued*)

Police Officer	I.D.#	Assignment
Paul M. Ivens	8310	District D
John B. Kelly	8311	District B
John A. Klokman	8312	District A
Robert W. Lockhert	8313	District C
William Lopez	8314	District C
Lawrence E. Martinez	8315	District C
Francis K. Matthews	8316	District B
Richard E. Meade	8317	District B
Raymond R. Mosher	2329	District E
Robert Newton, Jr.	8319	District B
Karen M. Nixon	8320	District B
John F. Nolen, Jr.	8321	District B
James P. O'Shea	8322	District D
Kenneth A. Peters Jr.	8323	District B
Anthony M. Pettus	8324	District A
Richard E. Priest Jr.	8325	District B
Carmen A. Rodriquez	8326	District C
Maria E. Rodriguez	8334	Operations
William T. Rogers	8327	District B
Robert G. St. Peter	8330	Persn. Div., Med. Incap. Sec.
Pamela R. Smith	8328	Persn. Div., Ext. Leave Sec.
Rhethia Y. Stewart	8329	District C
Lynnette Sumpter	8332	District B
Nadine A. Taylor	8333	District B
Stephen C. Vermette	1303	District A

JOSEPH M. JORDAN
Police Commissioner

EXHIBIT C

BOSTON POLICE

P. O. NO. 81-156

PERSONNEL ORDER — Layoff

July 22, 1981

The following-named Police Officers are hereby separated from service in the Boston Police Department because of lack of money, effective at the close of business on Tuesday, July 21, 1981. They retain reinstatement rights, pursuant to Massachusetts General Laws, Chapter 31, Section 39.

Police Officer	I.D.#	Assignment
Vincent R. Adduci, Jr.	1430	District D
Seifuddin N. Akram	8202	District B
Henry W. Barron	8203	District A
Joseph C. Britt	8204	District D
Joseph H. Browning	1521	District B
Michael V. Butler	8205	District D
Clovis L. Cobb	8206	District D
Herman N. Cole	8207	District C
Orrin C. Crooms	7901	District D
Michael E. Curry	8208	District E
Thomas A. Dowd	8210	District E
Sandra E. Ellis	8211	District D
Joseph A. Favale	7038	District A
Anthony V. Feudo	1245	District E
Edward L. Fleming	8214	District C
Dino A. Gonzalez	8215	District C
Gary C. Greenwood	1285	District A
Robert F. Groblewski	8217	District E
Frederick W. Hirst	8218	District A
Carol E. Hullum	8212	District B

EXHIBIT C (*continued*)

Police Officer	I.D.#	Assignment
Gus Irby	8216	District B
Charles M. Johnson	8219	District B
Bernard M. Kelly	1294	District C
William M. Kenricken	8221	District B
William V. Kennedy	8224	District E
Richard W. Laham	1225	District A
Joseph P. Lally	8222	District A
John J. McCarthy III	1322	District C
Joseph K. McNiff	8223	District C
Christopher A. Moreno	8225	District A
Ronald F. Myers	8226	District B
Ronald M. Nelson	8227	District B
Michael M. Primm	8228	District C
Paul Rogers	8230	District D
Alicia B.C. Schepici	8231	District D
Donta P. Singleton	8232	Persn. Div., Med. Incap. Sec.
Patricia A. Skeen	8233	Persn. Div., Ext. Leave Sec.
Michael K. Sparks	8234	District C
Ellen Stone	8235	District A
Ellis E. Thornton	8236	District A
Robert E. Tinker	8237	District A
John T. Watts	8238	District D
George White, Jr.	7373	District C
Paul R. Wilson	8239	Persn. Div., Med. Incap. Sec.

JOSEPH M. JORDAN
Police Commissioner

EXHIBIT D

BOSTON POLICE

P. O. NO. 81-158

PERSONNEL ORDER — Layoff

July 24, 1981

The following-named Police Officers are hereby separated from service in the Boston Police Department because of lack of money, effective at the close of business on Tuesday, July 28, 1981. They retain reinstatement rights, pursuant to Massachusetts General Laws, Chapter 31, Section 39.

Police Officer	I.D.#	Assignment
David M. Allen.	7988	Persn. Div., Med. Incap. Sec.
Terrace L. Avery	7989	District C
Robert W. Baird	7990	District D
Bonita L. Bishop	7991	District C
Richard W. Bourque, Jr.	7993	Operations
Marcia A. Bowles	8001	District B
Richard B. Caines, Jr.	7994	District B
Leverne Cameron	7995	District C
Joyce G. Chase	7997	District D
Thomas A. Cosby, Jr.	1480	District B
Harold H. Diggs, Jr.	8002	District E
John C. Foote	8005	District B
Robert M. Ford	8006	District C
John F. Gallagher, Jr.	1295	District D
Ivan P. Gonzalez	8007	District E
Rudy Guity	8008	District D
Suzanne E. James	8033	District B
Kevin D. Jones	8011	District D
Ricky R. Jones	7999	District E

EXHIBIT D (*continued*)

Police Officer	I.D.#	Assignment
Richard M. Keefe	8012	District D
Horace N. Kincade	8013	District E
Adalberto E. Lio	8014	District E
Peter T. Lydon	8015	District D
Timothy E. Lynch	8016	District C
Steven W. McFarland	8017	District E
Joseph A. Murphy	8020	District D
Miguel A. Novo, Jr.	8021	District E
Kenneth R. O'Brien	8022	District D
Carmel E. Precia	8023	District B
William J. Robertson	1223	District A
Rafael E. Ruiz	8024	District B
Isaac Sneed	8025	District D
Richard P. Sullivan	8026	District E
Robert L. Tabb III	8027	District C
Ronald A. Tench, Jr.	8028	District D
Preston R. Thompson	8030	District B
John E. Tracey	1272	District A
David P. White	8031	District E
Malcolm B. Williams	8032	District D
Robert L. Woumn, Jr.	8034	District B
Timothy J. Wyse	8035	Persn. Div., Med. Incap. Sec.

JOSEPH M. JORDAN
Police Commissioner

SUPPLEMENTAL STIPULATION

Plaintiffs and defendants submit the following supplemental stipulation of facts:

1. If the Boston Police Department completes a systematic program of reduction in force of sworn personnel so as to terminate 252 sworn personnel, if such reduction in force is conducted so as to preserve representation of black and Hispanic sworn personnel at 11.7% and if such reduction in force is otherwise conducted in accordance with seniority provisions of Mass. G.L. c. 31, §§ [illegible] and 31 and in accordance with preferences provided for by Mass. G.L. c. 31, § 26, 223 white sworn personnel and 29 black and Hispanic sworn personnel would be terminated.

2. Application of preferences provided for by Mass. G.L. c. 31, § 26 operates to exclude 65 sworn personnel, of whom 60 are white and 5 are black and Hispanic, from a strict reverse seniority roster of 252 sworn personnel.

3. At present only 13 sworn personnel, of whom 12 are white and one black or Hispanic, excluding those with statutory preference, have seniority dates between December 30, 1970 and January 1974.

4. If the reduction in force referred to in paragraphs 1 and 2 hereinabove is carried out, black and Hispanic sworn personnel with a seniority date of as far back as January 16, 1980 would be laid off.

5. If the reduction in force referred to in paragraphs 1 and 2 hereinabove is carried out, 19 white sworn personnel with a seniority date of December 30, 1970 would be laid off.

6. Individuals with a seniority date of December 1970 were hired from civil service eligibility lists established on the basis of civil service entrance examinations which were the subject of the complaint in this action and the prior findings of this court.

Dated: August 3, 1981